

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2830 OF 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the Order, dated 06.01.2016, in I.A. No.739 of 2015 in F.C.O.P. No.762 of 2013, passed by the Judge, Family Court, at Secunderabad, whereby awarding interim maintenance of Rs.5,000/- per month to each of the petitioners and Rs.15,000/- towards legal expenses.

02. The ranks given to the parties in the interlocutory application will hereinafter be adopted throughout the order, for convenience of reference.

03. The petitioners filed petition in I.A. No.739 of 2015 for grant of interim maintenance at Rs.15,000/- per month to each of the petitioners and Rs.50,000/- towards legal expenses, pending disposal of the main case contending that the third petitioner is the wife of the respondent. Her marriage with the respondent/revision petitioner was performed as per Hindu rites and customs at Sri Raghavendra Swamy Kalyana Mandapam, Karkatpura, Hyderabad, and during wedlock, they were blessed with two children, petitioners 1 and 2. Now the petitioners 1 and 2 are aged about 12 and 7 years. The respondent filed divorce petition on the ground of cruelty and the third petitioner is contesting the same raising several contentions like necking out her from the matrimonial home on 26.01.2013 at 10.30 PM by beating her, having no alternative she is residing with her parents etc.

04. The third petitioner further contended that she spent an amount of Rs.50,000/- for puberty function of the first petitioner and got admission of the second petitioner in Swamy Narayan Gurukul, spending huge amount for books and other expenses, but the respondent never visited the children and paid even a single pie for

their maintenance. It is also contended that the respondent filed I.A. No.586 of 2015 for custody of the children wherein he pleaded that he has got sufficient income to maintain children and that his father was a famous astrologer, retired Railway employee and was also an earning member of the family, the respondent was working in multi national company, having sufficient income and ability to maintain the children, but not providing any amount towards their maintenance. Therefore prayed maintenance Rs.15,000/- to each of the petitioners besides payment of legal expenses of Rs.50,000/-.

05. The respondent filed counter denying material allegations made in the petition while admitting that the first and second petitioners born to them during wedlock and filing of divorce petition on the ground of cruelty and desertion etc. The specific contention of the respondent is that he is not an employee and not carrying on any business and that the third petitioner was earning sufficient income, but did not disclose her source of income, maintaining secrecy in everything and that the respondent is not liable to pay any amount towards maintenance and legal expenses and prayed for dismissal of the petition.

06. The trial court, upon hearing argument of both the counsel, awarded maintenance at Rs.5,000/- per month to each of the petitioners 1 to 3 besides granting Rs.15,000/- towards legal expenses. The said order is under challenge raising several contentions mainly on the ground that deposit of huge amount to the credit of her account and the same was produced during trial in the main petition and the same was not considered by the Judge, Family Court, while deciding the present petition and when the third petitioner is having substantial balance to the credit of her account, the respondent is not liable to pay any maintenance and prayed for dismissal of the petition setting aside the order passed by the Judge, Family Court, allowing the revision petition.

07. During argument, Sri P. Bhakthavatsal, learned counsel for the revision petitioner, reiterated the grounds urged before this court in the revision petition.

08. There is no dispute regarding marital relationship between the third petitioner and the respondent. The only contention of the revision petitioner before this court is that huge amount is lying to the credit of bank account of the third petitioner, i.e. Rs.50,00,000/- and she is able to maintain herself besides maintaining the minor children. On this ground alone, the third petitioner is disentitled to claim maintenance under Section 24 of the Hindu Marriage Act, 1955.

09. According to Section 24 of Hindu Marriage Act, where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable. Thus, it is the duty of the petitioner to prove that she has no independent income sufficient to meet her necessities during pendency of the petition filed under Hindu Marriage Act either for divorce or for other reliefs.

10. Here the case of the third petitioner is that she has no independent income. But the counsel for the revision petitioner drawn the attention of this Court to the Bank account produced before the Judge, Family Court, which is not part of the record in the interlocutory application.

11. According to Rule 60 of Civil Rules of Practice, any fact required to be proved upon an affidavit in any interlocutory proceeding shall unless otherwise provided by these rules, or

ordered by the Court, be proved by affidavit but the Judge may, in any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment. Thus, it is the duty of the parties to produce, if they desire to produce any document and mark that as exhibit them as exhibits, then the court shall annex a list of exhibits to the order.

12. In the present facts, no documents were marked and no witnesses were examined and in such case question of consideration of document which is not marked before the trial court in the interlocutory application does not arise. Therefore, the Judge, Family Court, at Secunderabad rightly disbelieved the contention that the third petitioner possessed huge amount to the credit of her account.

13. In the absence of any document marked before the Judge, Family Court, it is difficult for me to accept the contention in the revision petition filed under Article 227 of the Constitution. Even, otherwise, the respondent did not file additional documents following necessary procedure prescribed under the Code of Civil Procedure to look into those documents.

14. Hence, I find no illegality in the order passed by the Judge, Family Court, at Secunderabad, in I.A. No.739 of 2015 warranting interference of this court while exercising power under Article 227 of the Constitution.

15. In the result, the revision petition is dismissed confirming the order dated 06.01.2016 in I.A. No.739 of 2015 in F.C. O.P. No.762 of 2013 passed by the Judge, Family Court, at Secunderabad. No costs.

16. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26.08.2016

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