

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2641 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/wife is directed against the orders dated 02.03.2015 of the learned III Additional Senior Civil Judge at Kakinada passed in IA.no.511 of 2012 in HMOP.no.193 of 1980.

2. I have heard the submissions of the learned counsel appearing for the revision petitioner/wife and the learned counsel appearing for the respondent/husband. I have perused the material record.

3. By the orders impugned, the Court below had dismissed the IA filed by the wife seeking enhancement of monthly maintenance from Rs.3,000/- to Rs.8,000/- payable to her by her husband/respondent.

4. The case of the wife, in brief, is as follows:

She is the wife of the respondent in HMOP.no.193 of 1980. A maintenance of Rs.75/- was awarded to her in the year 1975. The said maintenance was enhanced to Rs.450/- per month. It was further enhanced to Rs.700/- as per the orders in IA.no.533 of 2010 and to Rs.2,000/- as per the orders in IA.no.23 of 2011. Subsequently, the said maintenance amount was enhanced to Rs.3,000/- per month. She is receiving the said maintenance from her husband/the respondent. They have no issues. Except the obligation to maintain the petitioner/wife, the respondent has no other obligations. The respondent had retired as a Headmaster of Zilla Parishad school and is drawing a monthly pension of Rs.16,000/-. He is living in his ancestral house at Narsipatnam. The cost of living has increased enormously. The maintenance amount being paid at the rate of Rs.3,000/- per month is insufficient for the maintenance of the petitioner. With the said amount she is unable to have a shelter and live a decent life. She is living

with her younger brother and his family, in a congested rented house. The children of her younger brother have come of age. Therefore, she is required to stay in a separate rented accommodation. Therefore, she has to pay substantial sum towards rent of a premises at Kakinada, where she is residing from the time of estrangement between the spouses. She needs Rs.5,000/- towards her food and other expenses, Rs.2,000/- towards rent for accommodation besides Rs.1,000/- to meet medical and other miscellaneous expenses. Therefore, in all she needs Rs.8,000/- towards her monthly maintenance.

5. The case of the respondent/husband as stated in his counter and as per the submissions made is as follows:

The petitioner is being paid a monthly maintenance of Rs.3,000/- at present is true. The High Court confirmed the enhancement amount ordered in IA.no.633 of 2009 as per the orders dated 09.12.2010 in CRP.no.4115 of 2010. Further, the monthly maintenance was enhanced to Rs.3,000/- very recently i.e., in the month of October 2011. The present petition claiming further enhancement of the said amount is filed in August, 2012, even before lapse of a period of one year. This respondent has to maintain his old mother who is of 82 years of age and who is totally dependant upon the respondent. It is false to state that this respondent is residing in his ancestral house at Narsipatnam. He is residing in a rented house. This respondent has to incur expenses on his maintenance, which include house rent, electricity consumption charges, expenses towards milk, vegetables and medicines etcetera; besides meeting the said expenses, he has to pay to the petitioner the maintenance at the rate of Rs.3,000/- per month. He is discharging a loan due to the State Bank of India, which he had borrowed at the time when his mother has under gone an operation on her lower limb. As his last rites have to be performed as per Hindu religion, he has adopted his sister's son. He had lost his eye sight. He underwent an operation for correction of eyesight in the right eye. He is unable to move from the bed. He had sustained fractures of bones of his leg. The contentions that the cost of living has increased and that the petitioner requires more maintenance than Rs.3,000/-

per month in the circumstances stated by her cannot be countenanced. The material allegations in the petition of the petitioner are false. Hence, the petition may be dismissed.

6. At the hearing before the trial Court, the petitioner and respondent were examined as PW1 and RW1. Exhibits R1 to R7 were marked on the side of the respondent. No documents were exhibited on the side of the petitioner. On merits, the trial Court had dismissed the petition of the petitioner/wife *inter alia* holding that very recently the maintenance was enhanced to Rs.3,000/- per month and that the said order was confirmed by the High Court and that except pension, the respondent has no other sources of income and that he is residing in a rented accommodation and that his adopted son has no sources of income and that there are no changes in circumstances and also the social status and financial status of the parties and that it is an undisputed fact that the respondent has sustained fractures of bones of his lower limb and that he is paying bank loan in instalments at the rate of Rs.4,000/- per month.

7. The learned counsel for the petitioner/wife would submit as follows:

By any reasonable standards and in view of the present day cost of living, the maintenance of Rs.3,000/- per month is hardly sufficient for maintenance of a woman, who, as on today, is of an advanced age of 70 years. The respondent/husband had retired as a Headmaster of a Mandal Parishad school. He is presently getting a monthly pension of Rs.24,000/-. There is admittedly an increase in his income. He has no other obligations except meeting his expenses and maintenance amount payable to the wife. The Court below ought to have seen that it is impermissible and illegal to adopt a boy aged 22 years. The trial Court had failed to see that the factum of adoption was not proved by independent evidence except by marking a deed of adoption. Even assuming for a moment that the adoption pleaded by the husband is true, he is under no legal obligation to maintain his adopted son, who is a major. He is not required to meet the family expenses of his adopted son, who is a major and the educational expenses of the children, if any, of his said adopted son. On the other hand, the adopted son is under an

obligation to look after the welfare of the aged adoptive father. As per the evidence brought on record, the respondent's mother has passed away and is not alive. He is no longer required to meet any expenses of his mother, which he was earlier meeting. The trial Court ought to have seen that the wife who is living separately is entitled to equal amount towards her maintenance which includes expenses towards food, clothing and shelter. Even the respondent has stated that he requires Rs.14,000/- towards his food, clothing, shelter etcetera. After deducting Rs.14,000/- from his monthly pension of Rs.24,000/-, there would be a surplus of Rs.10,000/-. Therefore, it would be just and fair to award Rs.8,000/- as maintenance to the wife. On one hand it is urged that he had sustained fracture injury and that he was bedridden. On the other, it is urged that he is meeting fuel expenses of his two wheeler. He is hale and healthy. The Court below did not take into account the fact that the cost of living is increasing day by day and that sufficient grounds are made out for enhancing the maintenance from Rs.3,000/- to Rs.8,000/- per month. The petition is filed for enhancement within one year, as the cost of living had increased and there are changes in the circumstances like insufficient accommodation in the house of the brother of the petitioner, the increase in the expenses of the petitioner and increase in the pension of the respondent.

8. On the other hand, the learned counsel for the respondent while supporting the orders of the Court below had contended that the Court below had rightly noted that within nine months after the enhancement of the maintenance to Rs.3,000/- per month, the present application seeking further enhancement is filed only to harass the petitioner. In a small town like Narsipatnam, Rs.3,000/- is sufficient for maintenance of an aged woman. The husband is not in a position to pay any maintenance exceeding Rs.3,000/- per month. The increase in cost of living equally affects both the parties. With the increase in cost of living, the amount the respondent is required to spend on his personal expenses and maintenance also increases. The petitioner did not approach the Court with clean hands. She did not produce any documentary evidence. The respondent has produced

documentary evidence including exhibit R7 which has got probative value in view of the provisions of the Bankers' Book Evidence Act. The respondent besides meeting his medical expenses is meeting the expenses of his adopted son, the educational expenses of the children of the adopted son and also the medical expenses of his aged mother besides other miscellaneous expenses. Hence, the order impugned, which is a well reasoned order, does not call for any interference.

9. I have carefully gone through the material record including the copies of the depositions of the parties. The relationship is not in dispute. The petitioner is receiving regularly Rs.3,000/- per month as maintenance from her husband is also not in dispute. The enhanced maintenance at the rate of Rs.3,000/- per month was awarded in October 2011 as per the final orders in IA.no.23 of 2011 is also not in dispute. The law is well settled that the maintenance awarded shall be adequate for sustenance, food, clothing and shelter. The respondent has retired as a Headmaster of a Zilla or Mandal Parishad school is admitted. The respondent did not produce and exhibit any record to show that his monthly pension remained the same as on the date of enquiry before the trial Court. According to the petitioner the respondent is receiving a pension of Rs.24,000/- per month even by the date of enquiry and at present. The petitioner in her examination-in-chief had reiterated her pleaded case, which is already stated supra. In her cross examination, she pleaded ignorance in regard to the fact as to whether the respondent adopted the son of his sister. She had admitted in her cross examination as follows: -
'She is residing in a portion of the house belonging to her younger brother. She did not file any document to show that she is residing in a rented house paying Rs.2,000/- per month and that she is meeting medical expenses. She is residing separately from the respondent since the year 1983. Her mother-in-law died in the year 1989. She does not know whether the respondent has lost his eyesight completely and is bed ridden due to fracture of his leg. It is true that pension was enhanced recently.' She had denied the following suggestions: *'It is not true to suggest that the adopted son is unemployed and that the respondent is under an obligation to look after the welfare of his*

adopted son and his family members. It is not true to suggest that the respondent does not own any house properties. It is not true to suggest that I am intentionally residing separately and had forced the respondent to depend upon others during his old age. It is not true to say that only to harass the respondent, enhancement petitions are being filed one after the other.' In the affidavit filed in lieu of examination in chief the respondent had stated as follows: *'He is incurring a total expenditure of Rs.24,800/-, that is, Rs.4,300/- towards rent on accommodation and electricity consumption charges; Rs.4,100/- towards provisions and rice; Rs.1,800/- towards milk; Rs.1,500/- towards his medical expenses; Rs.900/- towards vegetables; Rs.1,000/- on the grand daughter aged 9 months; Rs.1,200/- on vehicle and repairs of his vehicle; Rs.3,000/- towards maintenance being paid to the petitioner; Rs.4,000/- towards discharge of bank loan; and Rs.3,000/- towards debt borrowed at the time of the performance of ceremonies of the mother. Till 01.04.2014 he lived along with his mother in the house bearing door no.3-78/1, five road junction situate in Narsipatnam of Visakahaptnam District. On 14.04.2014 his mother had passed away. Since 15.04.2014 he is residing in the house, which was already gifted by his mother to his sister Putrevu Meenakshi. Exhibit R4 is the settlement deed dated 04.02.1985 executed by his mother in favour of his sister. Exhibit R5 is the original property tax register in favour of his sister.'* In his cross examination, he had admitted as follows: *'His father worked as headmaster and retired. His mother used to draw family pension of Rs.3,500/- per month. His mother stayed in his house till her last days. He was residing in upstairs from 01.05.2014.(Witness adds that he was necked out from his sister's house i.e., ground floor). He had obtained bank loan in 2013. At present he is drawing a pension of Rs.22,000/- nearly.'*

10. On a careful consideration of the facts and evidence, the following facts emerge: 'There is an increase in the pension of the respondent. He is drawing a pension of Rs.22,000/- per month even according to his own admission. His mother had passed away. His mother is a pensioner till her death. He is no longer required to meet the maintenance expenses of his

mother. He is residing at Narsipatnam.' He did not produce any document like rent receipt to show that he is paying rent and is residing in a rented accommodation. Even according to his own showing after excluding the amounts he is paying towards maintenance and loan instalments etcetera he requires Rs.11,200/- to meet expenses towards shelter and food. Even going by his own standard, it can straight away be said that the maintenance amount of Rs.3,000/- per month is hardly sufficient for the maintenance of the petitioner/wife, who is aged more than 65 years. Under law, the respondent is not under an obligation to maintain his major adopted son, even assuming for a moment that the adoption is true; and, he is not required to meet the expenses of his adopted son's family. It is the responsibility of the adopted son, who is a major, to maintain his family. Further, the adopted son is also under an obligation to look after the welfare of his adoptive father, that is, the respondent herein. Therefore, the contentions that he is meeting the expenses of his grand daughter and major adopted son cannot be countenanced. Further, he contends at one breathe that he had lost his eyesight and that his leg is fractured and that he is bed ridden; and, at another breathe he contends that he is incurring an expenditure of Rs.1,200/- on fuel and repairs of his motor vehicle. No medical record is filed to show that he is bedridden and that he had received treatment for his fractured leg and that he underwent an operation for correction of eyesight. There is no evidence to show as to for what purpose he had borrowed amount from the State Bank. The enhanced maintenance was granted in the year 2011. By now, five years time had elapsed. Therefore, even if this petition is to be dismissed, she will not be precluded from claiming enhanced maintenance based on the subsequent events like increase in cost of living, increase in the pension of the respondent, the death of his mother in the year 2014 and so on. Therefore, instead of driving the petitioner to file a fresh petition for enhancement, it is trite to enhance maintenance from a particular later date though not from the date of the petition filed in August 2012.

11. For the aforementioned reasons and particularly in view of the increase in pension of the respondent and reduction of his responsibility in maintaining

his mother who had passed away and that he is now having the support of the family of his adopted son and that there is admittedly an increase in the cost of living, it is trite to observe that sufficient case is made out for awarding enhanced maintenance to the petitioner/wife from a particular later date if not from the date of filing of the petition.

12. Viewed thus, this Court finds that the Court below was in error in not considering the facts correctly and the evidence in proper perspective and in refusing to enhance the maintenance even from a later date if not from the date of the petition. Though the application for enhancement of maintenance was filed within a short time from the date of the order enhancing earlier maintenance, considering the fact that sufficient number of years have lapsed by now, it is just and fair to reasonably enhance the maintenance from 01.07.2014. Coming to the quantum of maintenance to be enhanced, even going by the expenses which one is required to meet as per the contention of the respondent, it would be just and fair to enhance the maintenance payable to the wife to Rs.8,000/- per month from 01.07.2014.

12. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.511 of 2012 in HMOP.no.193 of 1980 is allowed in part without costs awarding enhanced maintenance @ Rs.8,000/- per month from 01.07.2014 keeping in view the interests of both the parties. The respondent is granted a time of eight weeks from the date of the receipt of a copy of this order to pay the arrears of the enhanced maintenance amount upto date i.e., upto the end of May, 2016 at the enhanced rate and as directed in these orders. It is made clear that the amount already paid shall be given credit while arriving at the arrears of maintenance. It is needless to mention that the respondent shall continue to pay to the petitioner regularly the future maintenance amounts, at the enhanced rate, which may successively fall due.

There shall be no order as to costs.

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

25th April, 2016
Vjl

M. SEETHARAMA MURTI, J