

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3278 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 18.03.2016 in I.A. No.99 of 2013 in F.C.O.P. No.140 of 2013 passed by the Judge, Family Court, at Secunderabad, whereby the learned Judge denied to grant of interim maintenance.

02. It is the case of the revision petitioner that she is engaged in private employment, working as teacher and earning Rs.7,000/- per month. Whereas the respondent allegedly earning Rs.30,000/- per month, but based on the allegations made in the affidavit filed by the petitioner and counter affidavit filed by the respondent, the trial court concluded that the respondent was earning only Rs.6,500/- per month and getting less income than the petitioner, declined to award interim maintenance under Section 24 of Hindu Marriage Act, 1955 (for short 'the Act').

03. The only contention of the petitioner before this Court is that if the respondent is not earning Rs.30,000/- per month, it is for him to produce documentary evidence in support of his contention, since the burden is upon him under Section 106 of the Indian Evidence Act, 1872, since the amount which he is drawing as salary within his exclusive knowledge and drawn the attention of this Court to a Judgment of the Calcutta High Court in **SMT. CHANDANA GUHA ROY v. GOUTAM GUHA ROY**^[1]. Wherein the Calcutta High court, at paragraph 11, held that the burden is upon the person, who alleged a particular fact, in view of section 106 of the Indian Evidence Act, 1872, as the actual income he drawing is within his exclusive knowledge.

04. Section 24 of the Act enables the Court to grant interim

maintenance, during pendency of the marriage O.P. either for divorce or for any other relief, subject to proof that either of the spouse had no independent source of income sufficient to meet their necessities. Therefore, the words “sufficient to meet necessities” assumes importance.

05. The petitioner approached the Judge, Family Court, for grant of interim maintenance admitted that she is working as Teacher, earning Rs.7,000/- per month and the amount she was earning is sufficient or not is the question of fact to be decided by the trial court and the petitioner also did not produce any documentary evidence in support of her claim.

06. The contention of the revision petitioner is that the respondent working in HDFC Housing Finance Limited and earning more than Rs.30,000/- per month, produced Photostat copy of the identity card and the respondent to establish that the respondent working in HDFC Housing Finance Limited, but the documents were not marked by the learned Judge, Family Court.

07. 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 them as exhibits, then the court shall annex a list of exhibits to the order. But it is complained by the counsel for the revision petitioner that the Judge, Family Court, is not marking any document in any interlocutory applications.

08. In the absence of any bar in the Rules framed by the State

of Andhra Pradesh under Family Courts Act, the learned Judge, Family court, is bound by the Civil Rules of Practice, more particularly, Rule 60 of Civil Rules of Practice which permits the Court to mark the documents as exhibits like a suit or in any other proceedings, refusing to mark document is nothing but violation of Rule 60 of Civil Rules of Practice and recording the finding based on extraneous material, which are not marked, before the court is an error apparent on the face of the record. In those circumstances, passing an order relying on the allegations in the affidavit and counter affidavit is erroneous on the face of the record.

09. Therefore, the impugned Order is hereby set aside, while remanding the matter to the Judge, Family Court, to decide I.A. No.99 of 2013 in O.S. No.140 of 2013 filed under Section 24 of the Act afresh, after affording reasonable opportunity to both parties, to produce the documents, in compliance of Rule 60 of Civil Rules of Practice.

10. With the above observation, the revision is allowed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 27.08.2016

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[\[1\]](#) AIR 2004 Cal 36