

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.3123 of 2010

ORDER :

The revision petitioner is the unsuccessful petitioner in I.A.No.82 of 2010 in O.P.No.987 of 2009 on the file of the Family Court, Visakhapatnam, covered by impugned order dated 07.04.2010. Pending disposal of O.P.No.987 of 2009, which is filed by petitioner herein for restitution of conjugal rights, I.A.No.82 of 2010 is filed for interim maintenance under Section 24 of Hindu Marriage Act, instead by mentioning Section 151 of C.P.C., at Rs.10,000/- per month and also an amount of Rs.10,000/- towards legal expenses, claiming that her husband is working in MAYTAS and is earning more than Rs.40,000/- per month. The husband as respondent to I.A.No.82 of 2010 resisted the same with the contentions that he lost his job in MAYTA's in February, 2009 and is being looked after by his parents. Having considered the termination of services of respondent in MAYTA's vide letter dated 20.02.2009, the Family Court, Visakhapatnam, held that the respondent has no employment later and as petitioner is studying M.Phil., she can get a job with her qualification, therefore, petitioner is not entitled to interim maintenance and dismissed the petition. Impugning the order dated 07.04.2010 in I.A.No.82 of 2010, this revision is preferred.

2. The contention of revision petitioner-wife is that the lower Court did not properly appreciate the facts and law and went wrong in

dismissing the application. Hence, prayed to set aside the dismissal order and grant interim maintenance and legal expenses as prayed for.

3. Respondent even was served and acknowledgment received, he failed to attend and therefore taken as heard and heard counsel for revision petitioner.

4. Perused the material on record to decide on merits.

5. The impugned order of the lower Court is perse unsustainable.

The interim maintenance petition is of the year 2010 and the so-called termination of service of the respondent in MAYTA's was dated 20.02.2009. The respondent did not mention in his counter specifically as to he has no avocation later. The respondent did not even mention his qualifications. The respondent did not mention he has no properties, much less through parents or any ancestral nucleus. He mentioned on other hand that he is being as if looked after by his parents. It shows his family affluence and even leave it as it is he is not only qualified and educated but also able bodied. Undoubtedly, the petitioner is studying M.Phil. and she has no employment and thus there is nothing to draw any capacity of her to maintain herself. Thereby the impugned order is liable to be set aside and the matter is required to be remitted to the lower Court for fresh disposal after hearing both parties and according to law.

6. Accordingly, the revision petition is allowed and the order dated 07.04.2010 in I.A.No.82 of 2010 in O.P.No.987 of 2009 on the file of Family Court, Visakhapatnam, is set aside and the matter is

remitted to the lower Court, irrespective of O.P.No.987 of 2009 is pending or not, and consider atleast till the disposal of O.P.No.987 of 2009 if it is disposed off, to decide the petition afresh in I.A.No.82 of 2010, according to law, after hearing both sides.

7. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

28th September 2016.

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