

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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Civil Revision Petition No.569 of 2015
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ORDER:

This civil revision petition, under Article 227 of the Constitution of India, filed by the respondent/husband is directed against the order dated 20.01.2015 of the learned Judge, Family Court-cum-III Additional District Judge, Vizianagaram passed in I.A.No.668 of 2014 in FCOP.No.92 of 2013 filed by the petitioner/wife under Section 24 of the Hindu Marriage Act read with Section 151 of the Code of Civil Procedure requesting to direct the respondent/husband to pay interim maintenance @ Rs.3,000/- per month besides Rs.2,000/- per month towards legal expenses, that is, in all Rs.5,000/- per month pending final disposal of the main OP filed by the husband for dissolution of marriage and grant of divorce.

2. I have heard the submissions of the learned counsel for the revision petitioner/husband ('the husband', for brevity) and the learned counsel for the respondent/wife ('the wife', for brevity). I have perused the material record.

3. The introductory facts, in brief, are as follows: - 'The husband by filing a counter resisted the aforementioned application of the wife. However, on merits, by the orders impugned, the trial Court had granted interim maintenance at the rate of Rs.3,000/- per month to the wife from the date of the filing of the petition i.e., from 21.04.2014 till the date of disposal of the main OP and directed that the monthly interim maintenance shall be paid on or before 10th of every calendar month pending final disposal of the main OP. The court below had also granted Rs.5,000/- to the wife towards legal expenses. Aggrieved of the said orders, the husband is before this Court.'

4. To begin with, the case of the wife is this: - 'She is the legally wedded wife of the respondent/husband. The husband filed the main OP for dissolution of the marriage and for grant of divorce. The said OP is filed with false and untenable allegations. Therefore, the wife is resisting the said petition. The husband had abandoned the wife and had left her to her fate and neglected to maintain her. He filed the main OP for grant of divorce to

get rid of the wife. He is working as a teacher and drawing a good salary. He is having properties and getting income from the properties. He has got sufficient means to maintain the wife. She has no means to maintain herself and to meet the legal expenses. She is depending upon the mercy of others for her livelihood. In the circumstances, she is constrained to file the instant application.'

5. Per contra, the case of the husband, in brief, is this: - 'The material allegations in the affidavit filed in support of the petition of the wife are all false. The wife is having sufficient properties and is getting huge amount from her properties. It is false to say that she has no means to maintain herself and to meet the legal expenses. She is not depending upon the mercy of others for her livelihood. Having filed criminal cases she has compromised with the husband. Though she was pregnant, the said fact was suppressed by her and her parents. After the wife was discharged from the hospital on 10.06.2003, she has threatened the husband stating that if he does not take care of the child she would file false cases against him and his family members. Accordingly, she had filed a criminal case invoking the provision under Section 498-A of the IPC, a maintenance case and a domestic violence case; and the said cases are pending on the file of the Court of the learned Judicial Magistrate of First Class, Vizianagaram. The husband is not responsible for the pregnancy of the wife. They lived together at Kothavalasa for a period of three months and twenty days and he had not fathered the child of the wife. He strongly believes that the wife is living in adultery and that some unknown person is responsible for pregnancy; and, the said fact is evident from medical scan report. He has never abandoned and neglected the wife and had never failed to look after her. The instant petition is filed by his wife to harass him.'

6. The learned counsel for both the parties advanced arguments in line with the respective pleadings. Before proceeding further, it is necessary to note that during the course of enquiry before the trial Court, no documents are exhibited. The operative portion of the order of the Court below reads as follows: **'In the result, the petition is allowed, by granting interim maintenance at the rate of Rs.3,000/- (Rupees Three Thousand only) per**

month to the petitioner, from the date of filing of this petition i.e., from 21.04.2014, till the date of disposal of the main petition. The amount shall be payable on or before 10th of every calendar month, by the respondent to the petitioner, pending disposal of the FCOP.no.92/2013. The petitioner shall open a Savings Bank Account and intimate the same within 15 days from today to the respondent. The respondent is further directed to pay an amount of Rs.5,000/- (Rupees five thousand only) towards legal expenses of the petition to the petitioner.’
[Reproduced verbatim].

7. Now the point for consideration is –

‘Whether the wife is not entitled to award of interim maintenance and legal expenses? Whether the interim maintenance awarded and the sum granted towards legal expenses are excessive and unfair in the facts and circumstances urged by the husband?’

8. The relevant and admitted facts, the contentions and the rival contentions are already stated supra. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement is admitted. The petitioner and the respondent are living separately is also not in dispute. In the marriage OP, both the parties traded serious allegations. The husband went to the extent of saying that he has not fathered the child of the respondent/wife. In the present revision there is no need to go into the issues involved in the main OP and record findings as to who amongst the spouses was responsible for the rift or estrangement. In the considered view of this court, there is no reason to deny award of interim maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for the sustenance of the wife. Unless the husband establishes that his wife has income of her own and needs no financial support from him, she cannot be denied interim maintenance from the husband and also legal expenses. The law is well settled that the interim maintenance awarded shall be adequate for sustenance, food, clothing and shelter. The relevant pleadings and the facts, which are not in dispute, would show that the wife is a house wife and that she is not employed and that the husband is working as a Teacher in Mandal Praja Parishad school. It is not the case of the husband that he has got any other dependants or other

financial obligations other than meeting his personal expenses. He did not produce his salary certificate. The main OP, which is of the year 2013, is still pending before the trial Court. Though it is stated in the counter of the husband that the wife is having properties and getting income from the properties and that the said income is sufficient to meet her maintenance expenses, no documentary evidence is produced to establish the said contentions. The admitted fact that the husband is working as a Teacher and drawing monthly salary is sufficient to come to a safe conclusion that he has got sufficient means to maintain the wife. Having regard to the reasons, this Court finds that the wife is entitled to award of interim maintenance and legal expenses. Considering the present day standards of cost of living, the interim maintenance @ Rs.3,000/- per month and the legal expenses awarded to the wife by the trial Court cannot be said to be excessive or unfair. The point is answered accordingly.

9. Viewed thus, this Court finds that there is no merit in the revision and that, therefore, the order impugned does not brook interference.

10. In the result, the Civil Revision petition is dismissed. The husband is granted two months time from the date of the receipt of a copy of this order to pay the entire arrears of interim maintenance, if any payable. The interim maintenance amounts, if any, already paid or deposited shall be given credit. However, he shall continue to pay the current maintenance regularly every month without fail as per the orders of the Court below.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

01st June, 2016

vjl