

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4755 of 2013

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the unsuccessful respondent/ husband assailing the orders dated 06.09.2013 of the learned Judge, Additional Family Court, at Hyderabad, passed in I.A.No.569 of 2012 in O.P.No.419 of 2012 filed under Section 24 of the Hindu Marriage Act, 1955, read with Section 151 of the Code of Civil Procedure, 1908, for grant of an amount of Rs.20,000/- per month towards interim maintenance pending final disposal of the main OP.

2. I have heard the submissions of *Sri P.Ravi Kiran*, learned counsel for the revision petitioner/ husband and of *Sri Praveen Vyapari*, learned counsel for the respondent/ wife. I have perused the material record.

3. The case of the respondent/ wife in support of her request, in brief, is this:

She filed the aforesaid Original Petition against petitioner, her husband, for restitution of conjugal rights. She is the legally wedded wife of her husband, revision petitioner; their marriage was performed in the presence of few select friends, relatives and her two brothers as per Hindu customs on 10.12.1982 in a rented house situated at Anand Nagar, Khairatabad, at Hyderabad, where the husband was residing as a tenant. At the time of the marriage, she was a widow; her 1st husband Sri K.S.R.Anjaneyulu died in the year 1977 leaving behind his wife (i.e., the respondent herein), one daughter and two sons. The petitioner herein is known to her family ever since his student days. After completing his higher studies and return from Germany in the year 1981, he secured a job in ICRISAT, Patancheruvu, Hyderabad. Upon deliberations, he offered to take care of the respondent herein and her three children and proposed to marry her so that all of them can stay together at

Hyderabad. After consultation with her brothers, it was agreed to shift to Hyderabad as proposed; and, the marriage took place in the rented house of the husband in the presence of very few friends and relatives and on a very low key as suggested and insisted by him. As desired by the husband, she came over to Hyderabad along with her children. Until the year 2007, the matrimonial relationship was smooth without any complaints or disputes. The husband joined as a Lecturer in the Department of Economics, Hyderabad Central University at Gachibowli, Hyderabad. He purchased a house plot at Brindavan Colony, Towli Chowki, Hyderabad. He also raised a loan for construction of a house on the said plot. He used to manage and look after the agricultural land of the wife and the house that was left by her 1st husband. He used to get the income from agricultural land and the house from time to time. In order to oversee the construction work effectively, he had shifted from Karolbagh, Padmanabhanagar, Hyderabad, and stayed at another rented house at Brindavan Colony, Toli Chowki, Hyderabad. During the said period, he was promoted as a Reader. He is now a Professor in the Department of Economics at Hyderabad Central University, Gachibowli, Hyderabad. On 24.06.1992, he performed the house warming ceremony of the newly constructed house at Brindavan Colony and thereafter, both the parties along with the children started staying there. They performed the marriage of the daughter on 19.06.1994, as husband and wife. In the year 1995, the husband was allotted a residential quarter at the University campus and he used to stay there occasionally depending on his work. In the year 1996, she came to know about his extra marital relationship. On his not obliging her requests, she made a representation to the Legal Aid Centre for Women, Andhra Mahila Sabha, Vidyanagar, Hyderabad, and the said institution registered a case, vide LAC No.194/ 1996 and issued notices to the husband and the lady involved with him and they were summoned to submit their answer to the representation. After the said incident, the husband developed cold relationship with her and started

staying more often at the residential quarter in the University campus. Without any reasonable and probable cause and for reasons best known to him, he started demanding her for divorce. As a devoted wife, she pleaded with him to forget the past and stay along with her as a husband and continue to perform the obligations. However, the husband never gave any reasonable cause for his evasive attitude and failure to perform the marital obligations. The husband issued a notice on 02.09.2007 alleging that he had merely permitted her and her children to stay in the house at Brindavan Colony and demanded them to vacate the said premises. The wife issued a reply dated 15.10.2007 narrating the whole facts and denying the claim of the husband in his notice and asserting the fact that she was his legally wedded wife and that he cannot ask her to vacate the premises. The husband did not issue any rejoinder to her reply notice and instead filed a suit O.S.No.176 of 2008 on the file of the Court of the learned XIII Additional Chief Judge, (Fast Track Court), City Civil Court, Hyderabad, and the same is pending. The house property bearing Dr.No.8-1-523/ 69, Brindavan Colony, Towli Chowki, Hyderabad, is her matrimonial home. The husband categorically admitted that he has made a declaration before his Employer, i.e., Hyderabad Central University on 07.05.1986 declaring that the respondent herein is his wife and her three children are his children. The said declaration is made by the husband in his own handwriting. That apart, he nominated the respondent/wife as his nominee in his LIC Policy and in his Unit Trust Certificate. He also admitted that he performed the House Warming Ceremony and the marriage of her daughter by participating in all the rituals along with her as her husband. He also admitted the photographs filed in proof thereof. She being the legally wedded wife of the petitioner herein sought the relief of restitution of conjugal rights. The husband had left her in miserable condition. She has no financial security and she is deprived of conjugal society of her husband. She is managing the house with great difficulty and with the help of her elder son,

who has to support his own family with his meager income. The house, which is big, requires maintenance and upkeep from time to time. He had totally neglected and failed to provide financial support and maintenance. The husband who is a Senior Professor in the Hyderabad Central University, which is a Central Government Establishment, is drawing not less than Rs.1,20,000/- per month towards his salary and he has almost every facility available to him within the campus including residential quarter. Thus, he is having huge surplus money with him. She, therefore, filed the instant application seeking interim maintenance of Rs.20,000/- per month for meeting all her needs and household needs.

3.2 The case of the husband, in brief, is this:

The OP for restitution of conjugal rights was filed with a *mala fide* intention. There was no marriage at all between the petitioner (husband) and respondent (wife). It is true that the respondent lost her husband in 1977 and she was blessed with three children through her husband, late K.S.R.Anjaneyulu. This petitioner purchased the house plot and thereafter, constructed a house with his hard earned money and by taking loans from the banks and from the University. The respondent did not make any contribution. The petition is filed with a *mala fide* intention to harass this petitioner. The respondent occupied the petitioner's residential house; as such, he filed the suit for recovery of possession. Her first child, Mrs. Jayasree, is employed and her husband is working in GAIL and they are earning huge amounts of money. The 2nd child, K.Jogendranath, is working as Software Engineer, at Hyderabad, and is earning more than Rs.50,000/- per month; and her third child, K.Sailendranath, is working as Sr. Software Engineer, at Bangalore, and is earning more than Rs.1,00,000/- per month. She was having a house at Ongole; the same was demolished and a multi-storied building was constructed. She is getting rents in a sum of Rs.50,000/- per month. She and her children are having a house and several house plots at Hyderabad. She sold away the

landed property of her late husband at Ongole and invested that money on the house property. The question of restitution of conjugal rights does not arise as there was no valid marriage. The alleged matrimonial relation is denied. She is capable of maintaining herself. The allegation that she is the legally wedded wife of the petitioner is a myth. This petitioner is earning a net income of Rs.80,000/- per month and staying in the University quarter. The respondent grabbed his house property and staying there along with her children. He needs continuous medical treatment for heart ailment and diabetes etcetera.

4. On merits and by the order impugned in this revision, the Court below allowed the petition in part and directed the revision petitioner/ husband to pay Rs.15,000/- per month towards interim maintenance to the wife from the date of the petition till the disposal of the original petition.

5. Aggrieved thereof, the husband had preferred this revision.

6. The learned counsel appearing for the husband would submit as follows:
'The Court below erred in granting an amount of Rs.15,000/- per month as interim maintenance to the respondent. The Court below ought to have considered the fact that the respondent is not the wife of the petitioner and that there is no relationship of husband and wife between the petitioner and the respondent and as such the application under Section 24 of the Hindu Marriage Act is not maintainable. The Court below ought to have considered that the respondent has not filed any documents to prove the alleged marriage with the petitioner. Under the provisions of the Hindu Marriage Act, 1955, to prove the factum of marriage, the performance of essential ceremonies, particularly, Saptapadi has to be established. The Court below ought to have seen that the respondent is living in the house provided by the petitioner. The house stands in the name of the petitioner. The respondent and her eldest son, who is earning Rs.1.00 lakh per month, and his family are living in the said house. She also gets rental income from the said house. The Court below

ought to have considered that the respondent admitted in her petition filed for interim maintenance that her late husband has left behind huge income generating properties and that after his death, the properties devolved upon the respondent. The Court below ought to have considered the fact that the respondent is financially sound and is capable of maintaining herself and as such, her claim for maintenance is not maintainable. The Court below ought to have seen that the petitioner is indebted and is living in a rented portion paying approximately, Rs.30,000/- per month and that he has to spend huge amounts towards his medical and hospital bills.'

7. Per contra, the learned counsel for the respondent, while reiterating the pleaded case of the wife and while supporting the order of the Court below submitted as follows: 'The amount awarded is a very meager amount. In the property left by her first husband she is only having a small share along with her children. Some property was already sold. The petitioner received the income from the property for a long time and invested the same on the construction of the house. In the present day cost of living, the interim maintenance awarded is hardly sufficient to make both ends meet. While awarding maintenance, the status of the family has to be taken into consideration. The petitioner had taken a false stand that the respondent is not his wife. The trial Court passed a well considered order. The order of the Court below does not brook interference.'

8. I have bestowed my attention to the facts and submissions.

9. The relationship between the parties is in dispute. The OP was filed by the wife/ respondent herein for restitution of conjugal rights. Though both the parties traded serious allegations, in the present revision, there is no need to go into the issues involved in the main OP and record any findings touching the merits of the main matter. The trial Court considered the following facts; viz., the declaration made, on 07.05.1986, by the petitioner in his own handwriting

before his Employer, i.e., Hyderabad Central University that the respondent herein is his wife and her three children are his children; the nomination of the respondent by the petitioner as his wife in his LIC Policy and in his Unit Trust Certificate; the performance of the House Warming Ceremony and the marriage of the respondent's daughter by the petitioner and his participation in all the rituals along with her as her husband; the fact that the respondent is staying in the house of the petitioner; and, other aspects', while coming to a *prima facie* conclusion that there is a relationship of man and wife between the petitioner and the respondent. 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. As the respondent established a *prima facie* case, the petitioner cannot be heard to say that the respondent is not entitled to claim interim maintenance. The law is well settled that the interim maintenance awarded shall be adequate for sustenance, food, clothing and shelter besides essential incidental expenses. The facts borne out by the record disclose *ex facie* that the husband is having good social status and that his economic condition is good. While awarding maintenance the status and economic & living conditions of the family will have to be taken into consideration and the maintenance awarded to the wife must be sufficient to enable her to live in reasonable comfort matching the dignity of the family. In the facts and circumstances of the case and the present day cost of living, the amount of Rs.15,000/- per month awarded to the respondent cannot be termed as excessive.

10. Viewed thus, this Court finds that there is no merit in the revision and that the order impugned does not call for interference.

11. Accordingly, the civil revision petition is dismissed confirming the orders of the trial Court. The petitioner/ husband is granted two months time from today for paying all the arrears, after deducting the amount, if any, paid as per the interim directions of this Court.

Pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

09th December, 2016
RAR

