

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5212 of 2015

ORDER:

The revision petitioner is the husband, who maintained against the wife, impugning the order of the learned Judge of the Family Court dated 21.07.2015 in I.A.No.197 of 2015 in O.P.No.1683 of 2015. The O.P. was filed by the husband against the wife for the relief of dissolution of the marital tie. The I.A.No.197 of 2015 was filed by the wife under Section 24 of the Hindu Marriage Act for interim maintenance and legal expenses. In their wedlock, they got a child stated to be major and pursuing her B.Tech in engineering though at the time of filing it was mentioned as aged about 15 years. The interim maintenance claim is virtually against the husband by the wife. She claim in the application that the husband was earning about Rs.1,00,000/- salary per month being Quality Controller, Tech Mahendra, who did his M.Tech before joining the job and she requires minimum of Rs.30,000/- per month as maintenance besides legal expenses of Rs.20,000/-. Opposing the application in the counter vis-à-vis arguments submitted during hearing in the lower Court was that he is ready to take her back and he is meeting the educational expenses of his daughter and claimed that he is getting a salary of Rs.35,000/- per month only and it is one of his claim that his wife is earning about Rs.25,000/- to Rs.30,000/- per month by doing job in consultancy business. It is therefrom the lower Court awarded interim maintenance of Rs.10,000/- per month which includes for legal expenses for no any further amount awarded towards legal expenses. Impugning the same the present revision is maintained by the husband.

Heard and perused the material on record.

Once the wife asserts that the husband is earning a minimum of Rs.1,00,000/- per month, it is his duty under Section 106 of the

Evidence Act instead of withholding best evidence to produce his pay slip of what is his gross and net salary for the lower Court to arrive at a reasonable conclusion and having withheld he has no right to say that he is getting salary of only Rs.35,000/- per month net from the job. Even taken of his contention of he is meeting the educational expenses of the daughter, though not filed no any proof in this regard before the lower Court, once he is affluent and to say his wife got any avocation and earnings there is no proof and as such from its consideration when the lower Court awarded at Rs.10,000/- per month as interim maintenance, there is nothing by sitting in revision against the impugned order to interfere much less to reduce. The fact that he is willing to take back his wife may be considered if he makes a request before the Family Court for further reconciliation, that too having maintained the petition for divorce and not for restitution of conjugal rights and even he cause dismissed the petition for default on 13.08.2016, since filed restoration application which is pending in SR.No.1039 of 2016 and the learned counsel for the revision respondent/wife states that if he comes forward to lead evidence, she has no objection for restoration of that application to decide the main case on merits and thereby what he contends of the interim maintenance to be granted only till dismissal of the divorce petition, no way sustains when he maintained restoration application.

Having regard to the above, there is nothing to interfere with the order of the lower Court and accordingly, the revision petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 24.08.2016
ska