

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Civil Revision Petition No.4867 of 2015**

**ORDER:**

The unsuccessful respondent-wife had filed this revision under Article 227 of the Constitution of India assailing the orders dated 08.07.2015 of the learned Judge, Additional Family court passed in I.A.no.293 of 2015 in O.P.no.735 of 2015 filed by her husband under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 for grant of a temporary injunction restraining the respondent-wife, her relatives, foster parents, brothers or any person claiming through them and on her behalf from entering into the petition schedule house pending final disposal of the OP.

2. I have heard the submissions of the learned counsel for the revision petitioner/wife and the learned counsel for the respondent/husband. I have perused the material record. The parties in this revision shall hereinafter be referred to as the petitioner-wife and respondent-husband as arrayed in the revision.

3. The introductory facts, in brief, are as follows:

The respondent herein, who is the husband of the revision petitioner, had filed the main OP for dissolution of the marriage and grant of divorce. The revision petitioner-wife is resisting the said application.

3.1 In the said OP, the subject interlocutory application for temporary injunction seeking the aforementioned relief is filed by the husband *inter alia* urging as follows:

The revision petitioner-wife and her family members are time and again threatening the respondent-husband by coming to his house and are creating nuisance. Therefore, it has become necessary for the husband to file the present application seeking temporary injunction to restrain the revision petitioner-wife and her relatives etcetera from entering into his house pending final disposal of the OP.

**3.2** The revision petitioner had filed a counter affidavit denying all the allegations and reiterated her case pleaded in the counter filed in the OP.

**4.** At the time of hearing before the Court below, no oral evidence was adduced. Exhibits P1 to P7 and exhibit R1 were exhibited. On merits, the trial Court had granted injunction in favour of the respondent-husband.

**5.** The aggrieved petitioner-wife preferred this revision petition *inter alia* contending as follows:

The Court below ought to have referred the matter to the Lok Adalat or mediation centre to enable the parties to arrive at an amicable settlement. The trial Court ought to have initiated any one of the ADR processes for amicable settlement of the matter between the spouses. Under the guise of *ex parte* injunction, the husband had thrown the wife out of the matrimonial home, with the help of police. Therefore, she had lodged a complaint with the Deputy Commissioner of Police and also with the Station House Officer, Malkajgiri Police Station. The husband is restraining her from entering into the matrimonial home. This may lead to irretrievable break-down of the marriage. If the injunction is continued, the damage that may be caused to the wife cannot be compensated by any means. The trial Court ought to have seen that exhibit P7-complaint has no evidentiary value. The trial Court had erroneously relied upon exhibit P5, the apology letter of the wife. The trial Court misconstrued the letter of apology. The letter of apology would only show that she is intending to lead a happy marital life. The trial Court ought to have seen that no supporting affidavit of a neighbour of the house of the petitioner is filed to substantiate his contentions that wife is shouting, crying and causing nuisance. Merely on the ground that there are triable issues in the OP, the trial Court had granted an injunction even though no *prima facie* case is established. If the injunction sought for by the husband is granted against the wife, the same would further increase the distance between the spouses and would lead to irretrievable break-down of the marital tie; and that may lead to a situation beyond repair. The injunction granted is causing more hardship to the wife than the husband, as she is being prevented from

staying in the marital home. Now, the wife is living at the mercy of her relatives as she is not having her parents. Hence the order impugned is liable to be set aside.

6. On the other hand, the learned counsel for the respondent-husband while supporting the orders of the Court below had stated that the wife by her unbearable and obnoxious behavior is creating any amount of physical and mental harassment and that she is shouting and crying in the house and causing nuisance not only to the husband and inmates of house but also to the neighbours and that the said grave acts of nuisance being committed by the wife being unbearable, the husband is constrained to file the petition for injunction. He would further submit as follows: "Not only the wife but also her relatives are coming again and again to the house of the petitioner and are threatening and harassing him. There is admittedly estrangement between the spouses. The respondent had left the marital home and went to her parental home i.e., the house of her foster parents. As on the date, the petition was filed and the injunction was sought, she was not residing in the matrimonial home. The trial Court had passed a well-considered order and it does not call for any interference. If the order is sustained both parties can live in peace till the final disposal of the main OP. Such a course provides sufficient time for cooling down the emotions besides time for reflection to both parties like the waiting period of six months in the case of divorce by mutual consent. Therefore, the order of injunction does not lead to breaking down of the marital tie for ever as alleged by the wife. The wife has no inclination to mend her ways. The false allegations are made by her only for the purpose of her defence."

7. I have noted the contentions. I have perused the material record.

8. There is no dispute in regard to the relationship between the parties. Their marriage was solemnized on 12.05.2013. Subsequently, there were disputes between the spouses. The husband had filed the OP for grant of divorce by dissolution of marriage. The wife is resisting the petition. Who among the spouses was chiefly responsible for the disputes and who

amongst the two spouses is the guilty party has to be determined in the OP after full-fledged trial. In this interlocutory application, there is no need to record any findings, which will have a bearing on the issues involved in the main OP. According to the husband, his wife, her relatives and family members are time and again threatening and harassing him by coming to his house and are creating unbearable nuisance and that therefore, he is constrained to file an application for temporary injunction to prevent the wife and her family members from entering his house. **Per contra**, the wife is contending that under the guise of the injunction order, the husband is not permitting her to enter the matrimonial home and that because of the injunction granted by the court below, she is being put to more hardship and that the injunction was granted even though a *prima facie* case is not made out and that on one day, when she had left for her relatives' house, the injunction order was obtained and that with the help of police, she is being restrained from re-entering the matrimonial home and that the injunction orders are likely to lead to a permanent and irretrievable break-down of the marriage and that the court below ought to have directed the parties to settle the matter by any one of the ADR processes instead of granting an injunction as prayed for by the husband.

9. Now, the wife is admittedly in her parental home i.e., the house of her foster parents and is living away from the marital home i.e., the petition schedule house where the husband is residing. In the respective pleadings, the parties traded serious allegations. As already noted, the truth or otherwise of the allegation has to be determined in the OP. No doubt, the trial Court is obliged to encourage the parties to settle the matter amicably even when there is a remotest possibility for such settlement by ADR process or other legal means. Whether the wife was and is living away from the matrimonial home by the date the orders were obtained or whether the order was obtained during the temporary absence of the wife from the matrimonial home is a complex question of fact. Admittedly, by the date the order was obtained by the husband, the wife was not living in the matrimonial home. Therefore, the better course is to encourage the parties to try and have the

disputes amicably settled by mediation or conciliation by maintaining the orders of injunction for quite some time or till the disposal of the main OP. Be that as it may. When the wife is restrained from entering the matrimonial home, adequate alternate provision must be made for her comfortable stay at a suitable place. She cannot be made to live on the mercy of others more particularly when she admittedly has no parents to seek support or depend upon for her needs. Even the respondent had alleged in his affidavit that the foster parents and relatives are time and again coming to his house and harassing him. Therefore, if she is restrained by an injunction order from entering into the matrimonial home, she has to necessarily live in some accommodation either of her foster parents/relatives or a rented accommodation. Even if she lives in her relatives' house, she cannot be made to live at their mercy. If some provision is made towards her accommodation expenses, she can live with dignity by paying some amount to her relatives while staying in her relative's house as a paying guest or she can secure a rented accommodation for her comfortable and independent stay. Therefore, till the time the trial Court makes an effort and initiates steps for re-conciliation and amicable settlement between the spouses by any one of the ADR process like mediation or conciliation and during the currency of the orders of injunction, the wife, who is restrained by way of injunction orders from entering the matrimonial home, can be simultaneously be awarded some reasonable amount payable by the husband to meet the expenses towards her residential accommodation. Further, the law is fairly well settled that terms and conditions can be imposed while either refusing to grant or granting an injunction. It is within the power of the court, while granting or refusing injunction to impose terms on the parties. Such power is inherent in courts of equity and the terms are imposed for the purpose of effecting justice between the parties. The court has also power to impose terms as a condition to the grant or refusal of such an injunction. Similarly also, the court may impose terms on the defendant as a condition of withholding injunction. The terms imposed can also be altered by the court subsequently. The views of the Court find support from the ratio in the decision in **P. Saraswathi v. V. Veerabhadra Rao** [1985 (1) APLJ 277].

**10.** Viewed thus, this Court finds that this revision can be disposed of by confirming the orders of the Court below by imposing certain conditions.

**11.** In the result, the Civil Revision Petition is disposed of confirming the orders of the Court below, subject to the condition that the husband shall pay @ Rs.5,000/- (Rupees five thousands only) per month to the wife, from the date of the order of the trial Court [i.e., 08.07.2015], to enable her meet the necessary expenses towards her residential accommodation. It is made clear that the husband shall pay the arrears upto 7<sup>th</sup> April, 2016 at the said rate of Rs.5,000/- per month, within two months from the date of the receipt of a copy of this order and shall there after continue to pay Rs.5,000/- every month to the wife as directed in this order on or before the 10<sup>th</sup> of every month till final disposal of the OP. It is made clear that the amount payable for the period of one month from 08.04.2016 to 07.05.2016 is payable on or before the 10<sup>th</sup> of May, 2016 and so on. It is needless to state that on failure of the husband to comply with the conditions now imposed, the injunction orders shall stand vacated. It is apt to mention that the Trial Court shall immediately make an earnest effort and initiate steps for an amicable settlement between the spouses by referring them to mediation or conciliation or any one of the other modes of ADR.

There shall be no order as to costs.

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

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**M. SEETHARAMA MURTI, J**

07<sup>th</sup> April, 2016

Note:- Issue CC by 25<sup>th</sup> April, 2016  
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