

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4779 of 2011

ORDER:

The unsuccessful respondent/ husband filed this revision under Article 227 of the Constitution of India assailing the orders dated 05.08.2011 of the learned Judge, Family Court-cum-IV Additional District Judge, Vijayawada of Krishna District, passed in I.A.No.50 of 2011 in O.P.No.550 of 2010 filed under Section 24 of the Hindu Marriage Act, 1955, by the wife for award of interim maintenance @ Rs.10,000/- per month pending final disposal of the aforementioned OP filed by the respondent for dissolution of the marriage and for grant of decree of divorce.

2. I have heard the submissions of *Sri K.Srinivas*, learned counsel for the revision petitioner (hereinafter, 'husband') and *Sri K.Sai Mohan*, learned counsel for the respondent (hereinafter, 'wife',). I have perused the material record.

3. The Original Petition was filed by the wife for restitution of conjugal rights. She filed the subject application for award of interim maintenance. The said application was resisted by the husband by filing a counter. On merits and by the order impugned in this revision, the Court below granted interim maintenance @ Rs.5,000/- per month to the wife from the date of the petition till the disposal of the original petition.

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

5. The learned counsel appearing for the husband would submit that the wife alleged in her complaint that the husband is drawing a monthly salary of Rs.30,000/-, but failed to produce any documentary proof in that regard and that she had voluntarily deserted the company of the husband and started living away from him and that the husband was subjected to harassment by

filing a criminal complaint before the Law & Order Police Station, Vijayawada, and that there is a fixed deposit of Rs.1,50,000/- in the joint names of the parties and that the said amount was transferred from the account of the husband to the joint names of the parties and that since the wife deserted him and filed a false criminal complaint and also an application for restitution of conjugal rights and is not showing any interest to return to the matrimonial home, the husband is constrained to file the OP for divorce and therefore, in the facts and circumstances of the case, the trial Court not ought to have awarded any interim maintenance to the wife.

6. Per contra, the learned counsel for the wife would submit that the wife is having love and affection towards the husband and that the husband without any reason has withdrawn from the society of the wife and that he is working as a Computer Engineer in ICFAI University, Hyderabad, and drawing a monthly salary of Rs.30,000/- and that having deserted the wife, he filed a petition for divorce as a counter blast to the application for restitution of conjugal rights filed by the wife and that the wife was subjected to harassment and that therefore, she was constrained to file a police complaint and that a case in Crime No.368 of 2010 was registered by the police concerned under Section 498-A IPC and that the husband neglected to provide maintenance to the wife and that if the husband disputes his monthly salary, it is for him to produce his salary certificate, which is the best evidence, and that for non-production of the salary certificate, an adverse inference can be drawn; and that admittedly, the wife is a house wife and is not having any income or sources of income and that in the present day cost of living, the amount awarded is very meager amount and, therefore, the order of the Court below does not brook interference.

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

8. The relationship between the parties is admitted. The petitioner and the respondent are living separately is also not in dispute. The fact that the wife is a house wife and is not having any income or sources of income is also not in dispute. The husband is employed is admitted. His monthly salary is, however, disputed. The wife contends that his salary is Rs.30,000/- per month. If the husband wants to contend that the said contention of the wife is not correct and that he is drawing a lesser amount as salary, sine the said fact is especially within his knowledge and as he is having access to the best evidence on the said aspect, he ought to have produced his monthly salary slip or a salary certificate irrespective of the fact that the onus of proof is not upon him, in view of the provision of section 106 of the Indian Evidence Act, 1872. Therefore, for not producing his salary slip or salary certificate, an adverse inference can be drawn. 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 as to who amongst the spouses was responsible for the estrangement and disputes. 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 besides essential incidental expenses. As rightly contended, in the present day cost of living, an amount of Rs.5,000/- per month is barely sufficient for sustenance of the wife.

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

10. 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

30th November 2016
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