

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos.1584, 1585 and 3201 of 2014

COMMON ORDER:

The Civil Revision Petitions are filed against the common order dated 02.05.2014 passed in I.A. Nos.156, 157 and 158 of 2014 in O.P. No.1253 of 2013 on the file of Judge, Additional Family Court, Visakhapatnam.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondent. Perused the material on record.

3) The revision petitioner is the wife of the revision respondent. The relationship is not in dispute particularly from the fact that the main O.P. No.1253 of 2013 was filed by husband seeking dissolution of their marital tie.

4) As the matter was pending before the Additional Family Court, Visakhapatnam, wife filed O.P. No.1499 of 2011 for restitution of conjugal rights and seeking to transfer the divorce petition to Anakapalli for joint enquiry and trial. Pending disposal of O.P. No.1253 of 2013, wife filed three applications i.e., I.A. Nos.156, 157 and 158 of 2014. I.A. No.156 of 2014 is filed under Section 24 of Hindu Marriage Act claiming Rs.50,000/- towards legal expenses and also expenses to travel from Hyderabad to Visakhapatnam to prosecute the case. I.A. No.157 of 2014 is filed claiming interim maintenance of Rs.50,000/- per month during pendency of F.C.O.P. Nos.1499 of 2011 and 1253 of 2013. I.A. No.158 of 2014 is filed under Order 39 Rule 1 and 2 of C.P.C directing the respondent to return the original educational

certificates of petitioner, which are in the possession of respondent. It is the observation by the learned Judge, Additional Family Court while disposing all applications vide common order dated 02.05.2014 in dismissing the petition along with interim maintenance application and legal expenses application i.e., I.A. No.156 and 157 of 2014, that if really the certificates of wife are with the husband, the wife might have taken steps to get back the certificates and she conceived the idea of those documents being with the husband to show as if without original documents, she could not be in employment, to support her contention that she is with no avocation and staying temporarily at Hyderabad to prosecute her further academics.

5) Leave about correctness of the observation to be decided hereafter since impugned in the revision; so far as custody of the documents concerned, it requires some evidence to be adduced before the trial Court, where from in the event of proof either under Section 27 of Hindu Marriage Act, which is the specific provision or even under Order XI Rule 14 read with Section 151 C.P.C, she can file similar application before the Family Court to decide along with the main petition. Thus, without prejudice to such right of her to file fresh application under above provisions and with better particulars, the C.R.P. No.1585 of 2014 in relation to I.A. No.158 of 2014 is disposed of by closing the same. No costs.

6) Now coming to the other two applications viz., I.A. Nos.156 and 157 of 2014 filed by her seeking interim maintenance and legal expenses under Section 24 of H.M Act, instead of filing a

single application under the same provision, it is her averment in the affidavit filed in support of the petition that the respondent is working as a Project Lead-Cap Gemini at Bangalore and drawing a salary of Rs.1,00,000/- per month. She does not have the correct information of his earnings. It is only an assumption for what his employer is paying him, personally known to him. She claimed interim maintenance of Rs.50,000/- per month and legal expenses of Rs.50,000/- from the above and in saying she is with no avocation and dependent on her parents and she also averred that her husband's parents are not dependents on him and there is no other dependent on him as they have no children in their wedlock.

7) The counter averment of the respondent, particularly at para Nos.6 to 11 is that the respondent reliably learnt that petitioner—wife is working in Hyderabad and earning a decent salary out of her employment. She suppressed said fact and is claiming maintenance pendent lite only to cause loss and harassment to him, even he is not having any job and has been residing at Anakapalli with his parents since a longtime, that he quit the job because of the harassment by the petitioner—wife and he is wandering around the Courts, in the criminal case filed under Section 498-A IPC and also other cases filed by her and he is demoralized due to conduct of his wife, who spoiled his bright future.

8) From these respective pleadings in the interim maintenance application and legal expenses application, as rightly concluded, learned counsel for respondent placed reliance on expression of the Mandhya Pradesh High Court in **Laxmibai vs**

Ayodhya Prasad @ Ramadhar¹ wherein at para No.9, it was held that the scope of enquiry under Section 24 of the Act is not as wide as the full fledged trial of the suit or proceedings, but would be certainly an enquiry based either on oral evidence or affidavits of the parties sufficient enough to decide the question of grant of interim relief.

9) The lower Court in the impugned common order dated 02.05.2014, particularly at para No.9, observed that the petitioner—wife is resident of Visakhapatnam and became dependant on her parents and on the other hand contending that she is residing at Hyderabad and requires Rs.3,500/- per month for payment of house rent and she has not given the reasons as to why she shifted to Hyderabad and what made her to live at Hyderabad by paying the house rent of Rs.3,500/- per month. The contention of the respondent that she obtained employment at Hyderabad only and residing there, gains some credibility due to the claim of petitioner that she is residing at Hyderabad, thus without giving reasons, it is difficult to accept the claim of rent for her residence at Hyderabad. The further observation of the lower Court is that the couple are living separately for the past 5 ½ years and the other observation is regarding her certificates what is referred supra.

10) Section 141 C.P.C clearly says even for any other proceedings, the proceedings as in suit to the extent practicably to be adopted or applicable. If so when Order VIII Rules 3 to 5 C.P.C specifically says the pleadings must be specific and denial

¹ AIR 1991 MP 47

particularly by the defendant in the written statement must be specific and a non-denial or the evasive denial tantamounts to no denial. When such is the scope of law whether respondent—husband denied the averment of the wife that he is getting about Rs.1,00,000/- per month to her enquiry as Project Lead-Cap Gemini at Bangalore, the said averment of his employment as Project Lead is specific and not certain regarding his earnings of Rs.1,00,000/- per month.

11) The counter averment of the respondent at para No.9 particularly is not a specific denial of said averment of his working in Cap Gemini and earning Rs.1,00,000/- per month. Thus, it tantamounts to admission as per the scope of Order VIII Rules 3 to 5 C.P.C referred supra that he is working in Cap Gemini and earning not less than Rs.1,00,000/- per month.

12) It is, no doubt, the attention of the Court was drawn to the counter at para No.6 of the husband, where he says that he was not having job and was residing at Anakapalli with his parents since long time and he quit the job because of harassment by his wife and is wandering around Courts. Even from this, he admits that he was in employment but he did not furnish any particulars as to in which job and where he was working, for what salary and when did he quit the job and with what proof.

13) Here, importantly, the lower Court ill-appreciated the material forgetting the basic principle that once the husband claimed that he quit the job on account of the alleged harassment of the wife and presently with no avocation, it is for him to establish where did he work, for what salary, when did he quit the

job and for what reasons. He did not establish those facts which are even within his exclusive knowledge.

14) Here, if once, it is not denial of working in Cap Gemini, it is for him to establish by producing his salary slip as to what is his monthly salary if he is not getting Rs.1,00,000/-. The non-production of the documents, which he could produce leads to adverse inference, that but for his getting more than Rs.1,00,000/- per month he could have produced the best evidence available with him. Same is the proposition of law from reading of Section 106 of Evidence Act and from the Three Judge Bench expression of the Apex Court in **Gopal Krishnaji Ketkar Vs Mahomed Haji Latif**². It is also important to mention in this regard that the husband filed caveat before this Court and in the cause title of the caveat, he clearly mentioned that he is working as Software Engineer, Project Lead-Cap Gemini at Bangalore, whereas his permanent residence is shown at Gandhinagar, Anakapalli, Visakhapatnam. From the fact that by showing his job as such at the post disposal of these three petitions what the wife asserts his job as Project Lead of Cap Gemini, at Bangalore is confirmed. Here from the above, the Court cannot ignore the fact that when his working as Project Lead, Cap Gemini at Bangalore is established, the only inference to be drawn, as discussed supra, is that he could have established but for his earnings more than Rs.1,00,000/-, though burden is on him to prove under Section 106 of Evidence Act of what he actually gets as monthly salary and also from the expression in considering the adverse inference against him referred supra. Once these are the facts, so far as the power of

² AIR 1968 SC 1413

this Court under revision is concerned, the plenary jurisdiction under Article 227 Constitution of India is always available to decide not only legality and correctness but also rectify any order or correct any order, where the order per se is unsustainable. Thus, the revisions are sustainable and the contentions urged against the maintainability of revisions before this Court and scope of exercise of jurisdiction by this Court are untenable.

15) Now, coming to the other contention raised by the learned counsel for the respondent of these matters require remand for the factual analysis to be decided only by the lower Court; it is a fact not in dispute that this Court, while entertaining the revisions, passed an interim order on 04.07.2014 in C.R.P. M.P. No.2231 of 2014 in C.R.P. No.1584 of 2014 granting Rs.20,000/- per month towards interim maintenance to the wife from the husband and the husband filed vacate petition in C.R.P. M.P. No.6818 of 2014 and after hearing the same and considering the material on record, by order dated 28.04.2015, the vacate petition was dismissed confirming said interim maintenance order.

16) Leave it as it is, the learned counsel for the respondent—husband placed reliance on the expression of the Division Bench of this Court in **Parchuri Rajya Lakshmi vs Parchuri Viswa Sankara Prasad**³. In fact in this case, the Division Bench of this Court, while sitting in revision in deciding the quantum of maintenance, from factual matrix, fixed maintenance of Rs.2,000/- per month by enhancing it from Rs.150/- per month. Thus, even the quantum can also be fixed

³ AIR 1995 AP 147

while sitting in revision by this Court. Learned counsel for the respondent also placed reliance on ***Manokaran @ Ramamoorthy vs M.Devaki***⁴, wherein the admitted facts were that the wife was drawing salary of Rs.4,500/- per month and was living at her brother's house and the husband was earning only Rs.70/- per day and in view of the admission made by wife, the revision Court set-aside the order of maintenance and same is on authority to say revision court is entitled to consider the quantum of maintenance also to enhance or reduce from the material available on record.

17) The Learned counsel for respondent further placed reliance on ***Smt Indu Singh vs Dr. Ranjeet Singh***⁵, where the Punjab High Court observed at para Nos.14 to 16 that the status of applicant as also income of other party should be taken into account in fixing the quantum and thereby the trial Court held that wife, who got independent means is not entitled to interim maintenance and awarded only legal expenses. The Punjab High Court, while sitting in revision, observed that even for awarding legal expenses when the wife got sufficient means, is per se unsustainable apart from fact that she is entitled to interim maintenance irrespective of showing she got some means and thereby remitted the matter to the lower Court for fresh consideration. From para No.17 of the judgment it is evident that there is no principle in all cases that the matter requires to be remitted to the lower Court for fresh consideration, once there is a material.

⁴ AIR 2003 Madras 212

⁵ 1998 AIHC 645

18) From this, now coming to the contention of husband that wife is doing some job at Hyderabad, despite her saying in the petition that she is house wife and dependent on her parents and with no source of living but for on her parents mercy, the respondent did not give any particulars as to where she works, what job she is doing. When she denied of her having a job, it is for him to rebut or otherwise to draw inference of her not working. Here that is not found even from him and in the absence of which, with a stray sentence of wife is working somewhere cannot be countenanced. Apart from it, one of the expressions, particularly in Laxmi Bai (supra) says conduct of the husband is also relevant. At para No.4 of the divorce petition, it is mentioned that the husband lost his job due to frequent absenteeism etc. Whereas in the counter filed by him in the interim maintenance application at para No.6, he stated that he quit the job. He lost the job is different from his quitting the job voluntarily for having better prospects.

19) Leave it as it is, both those versions are proved false from his caveat showing that he is working as Project Lead-Cap Gemini at Bangalore. This revision Court equally have the powers of the appellate Court so far as taking of additional evidence concerned and even under Order LXI Rule 27 (1) (B) C.P.C, the Court got an inherent power to take any additional evidence, if it is necessary for effective disposal of the case. The law is fairly settled by several expressions of the Apex Court in this regard, that power of the Court is different from any right of the party. The caveat petition contents supra thereby can be taken as additional evidence. From the above, the conduct of the husband is not fair

by taking inconsistent stands and ultimately admitted in the caveat that he is working as Project Lead, Cap Gemini at Bangalore and failed to produce any material to say that he is not drawing Rs.1,00,000/- per month.

20) From this, the learned counsel for the respondent—husband placed reliance on another expression in **Arpana Sharma vs Rajinder Sharma**⁶. In fact, in the very decision, at para No.10, it was categorically held, by referring to the expression of the Apex Court in **Smt.Jasbir Kaur Sehgal vs District Judge, Dehradun**⁷ that the Court, while fixing maintenance, has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance.

21) Further, Arpana Sharma (supra) at para No.13, categorically observed that regarding the quantum of maintenance, learned counsel for the respondent specifically referred to the income tax returns filed by him for the previous four assessment years and submitted that he has been earning a very meagre amount which is not sufficient even to support himself and his present wife and the child. The counsel urged that the appellant being capable of earning a handsome amount who has in fact been earning sufficient amount from the source, is not at all entitled to the maintenance.

22) It is observed by the Court supra by negating such a contention, particularly considering the benevolent provision under Section 24 of H.M Act, in case wife is not capable of maintaining to

⁶ 2004 LS (P & H) 1554

⁷ AIR 1997 SC 3337= 1997 (4) RCR civil 65

get maintenance in equal status. The Apex Court in **Smt.Lata Kamat vs Vilas**⁸ held that the Act is a special right, irrespective of the result of the main petition for any relief covered by Sections 9 to 13 of the Act. The only consideration for exercising jurisdiction under Section 24 of the Act is whether the party claiming maintenance has independent income sufficient for his or her support and the necessary expenses of the proceedings. The wife cannot be held disentitled from claiming maintenance pendente lite under Section 24 of the Act even on a prima facie case having been found in favour of the husband that his marriage with her was void. It was held that Section 24 of the Act does not lay any such condition. Either of the spouses entitled to claim maintenance under this Section. The question, whether the marriage solemnized between the parties was a valid marriage or a nullity is still under consideration in appeal. Supposing the appeal is accepted later on and the decree declaring the marriage as nullity is set aside, the position will revert back to the one which existed before the filing of the petition under Section 12 of the Act and in that eventually, the said question being sub judice in appeal, the appellant-wife cannot be held disentitled to maintenance. Section 24 of the Act is a benevolent provision and the technicalities as have been sought to be raised should not be allowed to stand in the way of the wife to fight litigation against her husband. It is further held at para No.17 that the main consideration for fixing maintenance is that the maintenance must be reasonable and this can be concluded having regard to the standard of living of the parties, the capacity and income of the spouse from whom the

⁸ AIR 1989 SC 1477

maintenance has been sought, the wife must be maintained at the same standard as the husband or vice versa. One cannot live like a lord and the other like a maid nor one can live like princess and other like a servant. There must be drawn some balance.

23) Having regard to the above, once the wife is entitled to interim maintenance to live in equal status with the husband, she once proved that her husband is staying at Bangalore and is working as Project Lead in a software company and leave about drawing Rs.1,00,000/- per month from what is concluded supra. Thus, the wife is also entitled to stay in a rented house and get the maintenance in equal to the status of the husband. Once such is the case, it is her claim that his parents even not dependent on him and it is also his version as proved false from what is discussed supra that he is dependant on his parents and that itself shows his parents are affluent and are not dependents on him. Thereby, it can be concluded that there are no dependents on him but for his wife.

24) Having regard to the above, Rs.25,000/- per month towards interim maintenance is just and reasonable, besides Rs.50,000/ towards legal expenses.

25) Accordingly and in the result, the CRP Nos.1584 and 3201 of 2014 are allowed by setting aside the common dismissal order and granted Rs.25,000/- per month towards interim maintenance to the wife from the date of filing of the Interim maintenance application till termination of the divorce proceedings of the husband pending before the Family Court. The revision respondent (husband) also bound to pay Rs.50,000/- towards legal

expenses to the wife. The revision respondent (husband) is directed thereby of by excluding whatever the amount so far paid by him, he shall pay the balance amount within four (4) months and failing which, the remedy is left open to the wife to execute by any of the modes contemplated under Order XXI Rule 11 C.P.C or to file an application to stop the proceedings in the divorce petition filed by him and to discuss the same unless he pays what is due within the time being stipulated by the trial Court. No order as to costs.

Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dt.01.09.2016
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Date:01.09.2016

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