

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL Revision Petitions Nos.2308 of 2015 AND 2876 OF 2015

COMMON ORDER:

These two Revision Petitions under Article 227 of the Constitution of India filed by the petitioner/wife and the respondent/husband are directed against the order dated 24.04.2015 of the learned Senior Civil Judge, Ramachandrapuram of East Godavari District passed in I.A.No.1309 of 2011 in O.P.No.16 of 2011 filed by the petitioner/wife under Section 24 of the Hindu Marriage Act read with Section 151 of the Code of Civil Procedure requesting to direct the respondent/husband to pay interim maintenance @ Rs.75,000/- per month besides Rs.25,000/- and Rs.10,000/- towards legal and travelling other expenses pending final disposal of the main OP filed by her for Restitution of Conjugal Rights.

1.1 On merits, the Court below by the orders impugned in the two revisions, had granted interim maintenance @ Rs.25,000/- per month from the date of the petition till the disposal of the main OP besides Rs.10,000/- towards legal expenses. The monthly interim maintenance was directed to be paid at the above rate on or before the 10th of the succeeding month.

2. I have heard the submissions of the learned counsel for the parties. The parties shall hereinafter be referred to as the wife/petitioner and the husband/respondent for convenience and clarity.

3. The basic facts necessary for consideration, in brief, are as follows: 'The petitioner is the wife of the respondent. On account of some serious disputes between the spouses, there was estrangement. The husband had filed OP 37 of 2010 in the Family Court at Visakhapatnam for grant of divorce. The said petition is also now pending on the file of the Court at Ramachandrapuram on being transferred to that Court. Both the OPs are pending.

4. Now, in the revision of the wife, she contends that her husband had deserted her without any reasonable cause and that that she is now

depending on her parents and that her husband is comfortably employed as a Senior Manager (Software) in M/s Infosys Technologies Limited at Techno Park SEZ, Mahindra World City, Chengalpet, Kanchipuram and Rs.1,50,000/- per month and that he owns extensive properties like buildings and plots at Visakhapatnam and that he is having sufficient income and is enjoying a luxurious life and is neglecting to maintain her and that she is living at the mercy of her aged parents and that he has come up with a false story in his pleadings and that he did not even file an affidavit denying the facts pleaded by her and that inspite of the petitioner/wife discharging the initial burden that is upon her and filing the copies of pay slips for a few months, the Court below had erroneously granted interim maintenance @ Rs.25,000/- per month only besides Rs.10,000/- towards legal expenses and that in the facts and circumstances of the case the Court below ought to have granted the amounts as claimed in her petition and that the order of the Court below is vitiated for not awarding the interim maintenance and expenses as claimed and for not considering the facts in the correct perspective and the legal principles in the light of the legal position in the decided cases.

4. *Per contra*, the husband, in his revision petition, contends that his wife is employed in a private Company at Hyderabad and that she is earning more than Rs.50,000/- per month and that she is capable of maintaining herself and that the Court below had erred in not giving a finding that the wife is not having independent income, which is not sufficient for her maintenance, and that the said aspect resulted in miscarriage of justice and that the Court below ought to have taken into consideration the income of the wife before awarding the maintenance and determining the interim maintenance and that the interim maintenance awarded is highly excessive. He would also contend that there are several deductions from out of his monthly salary besides deductions of Rs.34,000/-; Rs.11,500/-; and Rs.7,000/- towards home loan, car loan and loan taken from the Royal Bank of Canada.

5. During the course of enquiry before the trial Court, no documents were marked and no oral evidence was adduced. In CRP 2876 of 2015 this Court passed the following interim order on 14.08.2015:

“There shall be interim stay of all further proceedings pursuant to the order in IA 1309 of 2011 in OP no.16 of

2011 dated 24.04.2015 on the file of the SCJ, Ramachandrapuram, E.G. District on condition of the petitioner depositing 50% of the amount granted by the learned SCJ, Ramachandrapuram within a period of six weeks.”

6. The learned counsel for the parties made submissions in line with the pleaded cases.

7. Now the points for consideration are –

‘Whether the wife is entitled to award of interim maintenance and expenses? Whether the interim monthly maintenance awarded and the sum granted towards expenses to the wife are not just and fair in the facts and circumstances of the case? And, whether the awarded amounts need upward or downward revision? And, whether the order impugned is sustainable or not?’

8. The relevant admitted facts, the contentions and the rival contentions are already stated supra. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement is admitted. The petitioner and the respondent are living separately is also not in dispute. In the present revisions there is no need to go into the issues involved in the main OPs and record findings as to who amongst the spouses was responsible for the estrangement. 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. The pleadings and the facts which are not in dispute would show that the petitioner is a software engineer and owns immovable property/house acquired on loan. Though he might be discharging the home loan by paying instalments, the fact that he must also be getting some rents from the house if it is not personally occupied cannot be disputed. As already noted no documents are exhibited at the time of enquiry before the trial Court. The salary slips show different figures, as per the observations in the orders of the Court below; though the said figures vary from Rs.1,47,000/- to 98,037/-, from the said figures his net income can safely

be assessed and accepted as about Rs.75,000/- per month. *Ex facie*, from the record, it is clear that he is having good social status and his economic condition is good. Though it is stated in the counter of the husband that the wife is working in a private Company at Hyderabad and earning about Rs.50,000/- per month no documents are file to prove the said contention. The contention advanced at the time of hearing that she is now working in Osmania University and earning monthly salary also cannot be countenanced in the absence of pleading and proof. On consideration of the observation in the orders of the Court below which are obviously made on perusal of the salary slips of the respondent/husband, it can be accepted that he is an income tax assessee. He did not produce his income tax returns to prove his annual income. He could have filed the copies of his returns, if he wanted to prove his contention that his income is far less than that was being sought to be projected by his wife. Both the cases are now pending on the file of a Court at Ramachandrapuram where the wife is presently residing with her parents. The husband is working at a place away from Ramachandrapuram and, therefore, to he has to undertake travel Ramachandrapuram as and when his attendance may be necessary in the pending OPs. In view of the fact that the available material on record is only sufficient to hold that the husband is earning a net income of about Rs.75,000/- per month only, the award of interim maintenance @ Rs.25,000/- to the wife living at Ramachandrapuram town, cannot be said to be either inadequate or excessive in view of the present standards of cost of living. Having analytically examined the pleadings and the submissions in juxtaposition, this court finds that the contentions of the petitioner/wife on one hand that the amounts awarded by the Court below towards interim monthly maintenance and expenses are inadequate and the rival contentions of the respondent/husband on the other that the amounts awarded to the wife are high and excessive are both devoid of merit; viewed thus, this Court finds that the amounts awarded by the Court below are just and fair in the facts and circumstances of the case and that the well-reasoned order of the court below does not warrant for interference.

9. In the result, the Civil Revision petitions, which are devoid of merit, are accordingly dismissed. The respondent/husband is granted two months time

from the date of the receipt of a copy of this order to pay the entire arrears of interim maintenance. The interim maintenance amounts, if any, paid or deposited as per the interim orders of the court shall be given credit. However, he shall continue to pay the current maintenance regularly every month without fail as per the orders of the Court below.

There shall be no order as to costs.

Miscellaneous petitions, pending if any, in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

29th March 2016
vjl