

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL Revision Petition No.5881 of 2015

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ORDER:

The unsuccessful respondent/husband had filed this revision under Article 227 of the Constitution of India assailing the orders dated 17.10.2015 of the learned Judge, Additional Family Court, Hyderabad passed in I.A.no.98 of 2015 in O.P.no.791 of 2013 filed under Section 24 of the Hindu Marriage Act by the petitioner/wife for award of *pendente lite* or interim maintenance at the rate of Rs.30,000/- per month to the petitioner/wife towards her maintenance and also the educational expenses of her minor daughter besides Rs.50,000/- towards legal expenses.

2. I have heard the submissions of the learned counsel for the revision petitioner/husband ('the husband', for brevity) and the learned counsel for the respondent/wife ('the wife', for brevity). I have perused the material record.

3. The basic facts necessary for consideration, in brief, are as follows:

'The husband had filed OP no. 791 of 2013 for dissolution of marriage and for grant of divorce. The wife is resisting the said petition. During the pendency of the said OP, the aforementioned interlocutory application is filed by the wife for grant of *pendente lite* maintenance @ Rs.30,000/- per month towards interim maintenance and also educational expenses of her daughter besides Rs.50,000/- towards legal expenses. The said petition was resisted by the husband. On merits, the trial Court had allowed the petition of the wife. Hence, the husband is before this Court.'

4. The case of the wife in support of her request, in brief, is this:

The parties lead marital life at Harlow, United Kingdom. Under the lawful wedlock, she has given birth to a female child by name 'Pranavi' on 17.08.2008. She is studying first class. At present, the said minor daughter is under the care and custody of the wife. After the tonsuring ceremony on 16.06.2009 and other functions that were performed on 19.06.2009 at

Hindupur, the husband had left for UK leaving the wife and daughter in India. Since then, the wife and daughter are under the care and custody of the parents of the wife. While so, the husband had filed OP no.31 of 2010 on the file of the Court of the learned Senior Civil Judge, Hindupur for restitution of conjugal rights. It is intended to disturb the wife from prosecuting her further studies and blame her. She is always willing to lead a conjugal life with her husband. The said OP was transferred to the Court of the learned Judge, Family Court, at Hyderabad and was re-numbered as O.P.no.192 of 2012. The said OP was not pressed by filing a memorandum, wherein, it was stated that the husband had filed O.P.no.53 of 2012 for grant of divorce. The said OP was re-numbered as the instant OP (OP no.791 of 2013) on transfer to the present court. The husband had neglected to provide maintenance to the wife, who is not having financial resources. The husband is causing mental agony and torture by his attitude towards his wife. The wife and her daughter have become a burden on the parents of the wife. The father of the wife is a retired employee and is a pensioner. He is unable to bear the expenses of his daughter and grand-daughter. The wife is resisting the petition for divorce filed by the husband. The husband had earned 2800 pounds per month, equivalent to Rs.2,24,000/- during the period between January 2003 to August 2010. He had earned Rs.3,00,000/- per month from his own clinic at Hindupur and as a Consultant in Government Hospital during the period from September 2010 to December 2011. At present, he is earning Rs.5,00,000/- per month from January, 2012 onwards. He owns a clinic, Lab and Medical Stores at Balaji Nagar, Hindupur. He owns valuable immovable properties, i.e., two house plots at ECIL Colony, Hyderabad; one house plot at Shamshabad; four house plots at the outskirts of Hindupur; one house plot at Sri Balajinagar, Hindupur; besides an extent of Ac.10.00 cents of mango orchard at Hindupur revenue shivar. All the said properties are worth crores of rupees. He is also having a share in the joint family properties, namely, a residential building of two floors situated at Sri Balajinagar, Hindupur of Ananthapur District; Pranavi Heart Care Centre (ground floor + First Floor) at Sri Balaji Nagar, Hindupur; four independent houses, which are leased out, worth Rs.30,00,000/- each; a residential building consisting of three portions

worth Rs.60,00,000/- at Hindupur; one old house situated at Sri Balajinagar, Hindupur worth Rs.10,00,000/-; and one house plot admeasuring 500 square yards at Sri Balajinagar, worth Rs.60,00,000/-. He is financially sound and is capable of paying Rs.50,000/- per month to the wife and Rs.10,000/- per month to the minor daughter towards interim maintenance and also Rs.50,000/- towards legal expenses. The wife is a student of MD (Physiology) from May, 2011 onwards. She has yet to attend to the theory and practical examinations. She has no income of her own. She has no sources of income. An amount of Rs.15,000/- per month each, is required for the maintenance of wife and the daughter and for meeting the educational expenses of the daughter. Hence, the husband is liable to pay the maintenance. Though M.C.no.85 of 2010 is filed on the file of the Court of the learned Judge, Family Court, at Warangal, the same was stayed at the instance of the husband.

5. The case of the husband, in brief, is this:

The material allegations in the case pleaded by the wife are false. As per the original plan, the wife intended to appear for an examination in the month of July, 2009 and thereafter, she has to return to UK. A ticket was also booked on 06.09.2009. However, for reasons best known to her, she did not show any interest to join the husband and had remained with her parents and had refused to lead marital life with her husband. In the month of March, 2010, the husband came over to India and had a meeting with the elders of both the sides. At that meeting, the wife and her parents were also present. At that meeting, the wife had agreed to lead marital life with her husband. On the next day, she had changed her stand and had refused to stay with her husband; and, went away along with her parents. Hence, a petition for restitution of conjugal rights was filed. Since the wife is not interested in joining the husband and as the efforts at reconciliation had failed, there was no other option for the husband except to file a petition for divorce. The allegations that the wife is willing to join the husband and lead marital life with the husband are false. The wife is a qualified doctor and is running a Nursing Home along with her father under the name and style "Sravanthi

Nursing Home” and is getting Rs.2,00,000/- per month. She had joined MD (physiology) course in the year 2011. She is a busy doctor. Hence, she has not attended to the classes. Therefore, she was not allowed to take her examinations in April 2014. Since she is earning her own income, she is not eligible to claim maintenance. The father of the wife is a retired surgeon. He is running the Nursing Home along with his daughter. He is also getting pension. The wife had stated in her pleadings that her husband is a useless person; and, now for the sake of maintenance, she is saying that he has got good reputation. Because of the problems created by the wife, he had returned to India and had settled at a remote place in Hindupur. He is not getting any income as stated by the wife. He is not getting any income, which is sufficient for his maintenance. He has to look-after his old aged parents.

His father met with an accident and had suffered serious brain haemorrhage. He had spent huge amounts on his father's treatment. He is not in a position to pay independent maintenance either to the wife or to his minor daughter. He has nothing to do with any of the properties mentioned in the pleadings of the wife and he is no way concerned with the said properties. The responsibility to maintain daughter is equally upon both the spouses. The maintenance expenditure of the daughter is to be shared by both the parents. As per his knowledge, the wife is looking after the Nursing Home and earning huge amounts. There is also a direction for expeditious disposal of the OP. Hence, the husband is taking steps to file his evidence affidavit and to cooperate with the Court for disposal of the OP expeditiously. Hence, the petition may be dismissed.

6. Both the learned counsel had advanced arguments in line with the respective pleadings.

7. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced. Even in the grounds of revision, the case of the husband as pleaded in his counter is reiterated. It was *inter alia* contended on behalf of the husband that the Court below had erroneously allowed the petition of the wife as prayed for by coming to an incorrect conclusion that

since the wife had joined MD course, there is no possibility for running a Nursing Home and earning any income and that the order impugned was passed on presumptions and assumptions.

8. The relationship between the parties is admitted. They are having a minor daughter by name Pranavi, who is studying 1st class at the time of institution of the petition is also admitted. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement. The wife and the husband are living separately is also not in dispute; and, that the daughter is under the care and custody of the wife is also not in dispute. In the present revision, there is no need to go into the issues involved in the main OP and record any finding as to who amongst the spouses was responsible for the rift or 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. It is the responsibility of the father to maintain the minor daughter. 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. In the case on hand, the husband had not produced any evidence except contending that the wife is running a Nursing Home along with her father and that the Nursing Home is that of her father. Even according to his admission, the wife is pursuing MD in Physiology and that she was not permitted to appear for examinations as she had not attended classes. The law is well settled that the interim maintenance awarded shall be adequate for sustenance, food, clothing and shelter. In case of maintenance of a minor daughter, the interim maintenance awarded shall be adequate to meet her educational expenses also. The pleadings and the facts, which are not in dispute, would show that the husband is a medical practitioner and he had earned substantial amounts while he had worked in UK. When the wife in her affidavit has stated the income earned by the husband during various periods, the said averments are not specifically denied by the husband. Even the contentions of the wife that her husband owned substantial immovable

properties are not specifically denied. The facts borne out by the record disclose *ex facie* that the husband is having good social status and his economic condition is good. The husband did not produce his income tax returns to prove his actual income. Considering the income in the past, which is not denied, it can be safely presumed that he is an income tax assessee. Even in the grounds of revision, it is not urged that the husband is not an income tax assessee. Thus, it is not the specific case of the husband that he is not an income tax assessee. Considering the pleadings of the parties, and the status of the husband, the Court below had awarded maintenance @ Rs.15,000/- per month each to the wife and daughter, i.e., a total interim maintenance of Rs.30,000/- per month to the wife and daughter and Rs.50,000/- towards legal expenses. When the wife had stated that the petitioner is running his own clinic, lab and medical stores at Hindupur and is getting income of Rs.5,00,000/- per month, the said allegations are not specifically denied and it is only stated that he is now living at a remote place in Hindupur and that he is not in a position to pay maintenance. Having given earnest consideration to the facts and submissions, this Court finds that the amounts awarded by the Court below are just and fair and do not warrant interference.

9. In the result, the Civil Revision petition, which is devoid of merit, is accordingly dismissed. The respondent/husband is granted two months time from the date of the receipt of a copy of this order to pay upto date, the entire arrears of interim maintenance, if any. The interim maintenance amounts, if any, already paid or deposited shall be given credit. However, he shall continue to pay, without fail, as per the orders of the Court below, the monthly interim maintenance amounts, which may successively fall due until the termination of the main OP.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

01st June 2016

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