

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2436 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 24.02.2016 in I.A. No.351 of 2013 in F.C. O.P. No.415 of 2013 passed by the Judge, Family Court, Secunderabad, granting maintenance Rs.25,000/- each to the petitioner and to her daughter, as she had no independent source of income sufficient to meet her regular necessities.

02. It is the case of the revision petitioner that he worked as Cost Accountant in Infosys and later worked in Reddy Laboratories and even now he is allegedly working in different companies and drawing salary and by the date of filing FCOP, he is working abroad and drawing substantial amount as salary, while drawing the salary of Rs.3,25,000/- in India and produced salary certificate issued by the Infosys to show that he was drawing Rs.3,25,900/- per month as salary and income tax return, but those documents were not marked by the Judge, Family Court.

03. The Judge, Family Court, after hearing both the counsel awarded maintenance of Rs.25,000/- per month each to the respondent and to her daughter as against claim of Rs.75,000/- per month. The same is now challenged on various grounds.

04. During hearing, Sri Prabhakar Sripada, learned counsel for the revision petitioner, has contended that the trial court did not consider the documents produced before it, but based on oral evidence recorded in main F.C.O.P. arrived at a conclusion that the revision petitioner is drawing Rs.1,81,930/-, misconstrued the specific sentence in the deposition where he specifically asserted that he was drawing Rs.1,81,930/- and odd, and that passing such Order awarding maintenance @ Rs.25,000/- per month to the respondent and to her daughter, is erroneous and prayed to set

aside the same.

05. Sri Eranki Phani Kumar, learned counsel for the respondent, is that the evidence recorded in the FCOP is sufficient to arrive at a conclusion that the revision petitioner was working in different companies, earning huge income per month and whereas the respondent is only the house wife, she has no means to maintain herself from any independent source and that the child is about to be admitted in a school and therefore, prayed for dismissal.

06. As seen from the order under challenge, the contention of the respondent is that the revision petitioner is working as Cost Accountant in various companies and drawing huge amount of salary per month, whereas the respondent is only house wife, has no independent source of income sufficient to meet her expenses.

07. In view of the undisputed fact that the respondent herein has no independent source of income sufficient to meet her necessities, the revision petitioner being the husband is bound to maintain the respondent subject to income, he is earning.

08. Section 24 of the Act enables the Court to grant interim maintenance, during pendency of the marriage O.P. either for divorce or for any other relief, subject to proof that either of the spouse had no independent source of income sufficient to meet their necessities. Therefore, the words "sufficient to meet necessities" assumes importance.

09. It is the case of the revision petitioner that income tax returns and salary certificate issued by the Income Tax Department and salary certificate issued by the Infosys, though produced, they were not marked as exhibits, but passed the Order under challenge awarding huge amount towards maintenance.

10. According to Rule 60 of Civil Rules of Practice, any fact required to be proved upon an affidavit in any interlocutory proceeding shall unless otherwise provided by these rules, or ordered by the Court, be proved by affidavit but the Judge may, in

any case, direct evidence to be given orally, and thereupon the evidence shall be recorded, and exhibits marked, in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment. Thus, it is the duty of the parties to produce, if they desire to produce any document and mark them as exhibits, then the court shall annex a list of exhibits to the order. But it is complained by the counsel for the revision petitioner that the Judge, Family Court, is not marking any document in any interlocutory applications.

11. In the absence of any bar in the Rules framed by the State of Andhra Pradesh under Family Courts Act, the learned Judge, Family court, is bound by the Civil Rules of Practice, more particularly, Rule 60 of Civil Rules of Practice which permits the Court to mark the documents as exhibits like a suit or in any other proceedings, refusing to mark document is nothing but violation of Rule 60 of Civil Rules of Practice and recording the finding based on extraneous material, which are not marked, before the court is an error apparent on the face of the record.

12. Therefore, the impugned Order is hereby set aside, while remanding the matter to the Judge, Family Court, Secunderabad, to decide I.A. No. 351 of 2013 in F.C.O.P. No.415 of 2013 filed under Section 24 of the Act afresh, after affording reasonable opportunity to both parties, to produce the documents, in compliance of Rule 60 of Civil Rules of Practice, within two months from the date of receipt of the order.

13. With the above observation, the revision is allowed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 27.08.2016

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