

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.860 of 2016

ORDER :

Pending disposal of the O.P. No.331 of 2014 for divorce filed by the husband and O.P. No.32 of 2015 filed by the wife for restitution of conjugal rights, wife filed I.A. No.35 of 2015 for interim maintenance claiming at Rs.1,00,000/- per month. It is her averment that her husband is a software engineer earning Rs.100K per annum equal to \$8,000 per month and corresponding rupee value per dollar as on date Rs.4,80,000/- per month and there are no dependants on him and apart from his salary, he is owning three houses in U.S.A, apart from one house in HUDA colony, Hyderabad and also got Ac.20.00 of agricultural land near Yadagirigutta and R.Janagaon and is getting rents at U.S.A \$6,000 per month, Rs.15,000/- per month in Housing Board and from the lands Rs.5,00,000/- per annum and thereby she is entitled to the interim maintenance as prayed for. It is also averred by her that at the time of their marriage, her father paid Rs.5,00,000/- towards marriage expenses and her husband insisted to transfer the properties in his name which are in the name of her and her father, for which they agreed, he did not choose to reconcile to lead happy life and behind her back with oblique motive filed divorce application and which made her to file the application for

restitution of conjugal rights.

2) The counter filed by the respondent-husband in opposing her claim is simply denying about his owning houses at U.S.A and Hyderabad and getting rents and also owning lands or getting income or getting salary of \$8,000 p.m. It is not even his case positively that he never worked. What he says further in his counter is presently having lost the job, he is on the mercy of friends in surviving at U.S.A. There is no scrap of paper filed whether he was resigned or removed, if so when he was resigned and if at all removed on what grounds and what was his earlier pay and allowance. Though it is within his personal knowledge exclusively, which he is supposed to disclose from the burden lies on him under Section 106 of the Indian Evidence Act. The non-disclosure itself leads to the adverse inference of he getting \$8,000 per month. However, the fact remains that from the decree, by consent, of divorce obtained by wife from her earlier husband, there was a permanent alimony of Rs.28,00,000/- she received. Once that factum is not in dispute, burden is on her to show what happened to that amount or the income or interest therefrom, leave about he could not prove of he is working somewhere and earning affluently.

3) Having regard to the above, what the lower Court considered the material on record in awarding Rs.20,000/-

per month towards interim maintenance with Rs.10,000/- towards legal expenses no way requires interference by this Court while sitting in the revision.

4) The fact that the revision petitioner/respondent before the lower Court placed reliance on the expressions of Madras High Court in ***Kumaresan V. Aswathi*** (dated 21.06.2002), the Apex Court in ***Anu Kaul V. Rajeev Kaul*** (dated 23.03.2009) and ***Smt.Mamta Jaiswal V. Rajesh Jaiswal*** (dated 24.03.2000) of the Madhya Pradesh High Court apart from the expression already referred in the lower Court of Karnataka High Court in ***E.Shanti V. Vasudev H.K***^[1]. There in Karnataka High Court's expression, the wife herself admitted that she is a doctor by profession and working in clinic of her brother, thereby it was taken into consideration in negating any amount of maintenance from the means of both and that is no way helpful to deny in claim of the maintenance to the wife by the husband herein as rightly concluded by the lower Court.

5) Coming to the expression of the Apex Court in ***Anu Kaul*** the interim maintenance claim of rs.10,000/- with litigation expenses of Rs.22,000/- awarded by the District Court of Rs.2,000/- per month towards maintenance to the child and Rs.10,000/- towards litigation expenses by no separate maintenance to the wife from her means for the fact that she is sufficiently drawing salary of more than

Rs.9,000/- per month even taken what the husband claimed earning of Rs.40,000/- per month. However, the Apex Court when the matter came in appeal enhanced the amount to Rs.5,000/- per month to the maintenance of the child from Rs.2,000/- per month, thereby even from this expression what it indicates is means or earnings of the wife is only a consideration in fixing the quantum of not a ground to refuse. So also from the expression confined to the facts in ***Mamta Jaiswal*** supra where the husband was shown earning Rs.5,852/- whereas wife was earning Rs.4,000/- undisputedly thereby Rs.4,000/- per month to the wife additionally and Rs.1,500/- per month to the child awarded and the same was set aside ultimately because she is almost equally earning, not entitled to further maintenance towards interim maintenance. Coming to ***Kumaresan*** supra the wife was granted Rs.500/- per month towards interim maintenance besides Rs.5,000/- towards legal expenses as he was working and so far as one spouse concerned, it is claimed that she is working in BHEL, Trichy and earning Rs.4,500/- apart from other emoluments and perks and the record shows other spouse working in Khadi Board drawing Rs.4,500/- per month and thereby the Madras High Court set aside the order and remitted back the matter permitting both parties to adduce further evidence in respective proof of the claims to fix afresh the quantum entitled, if any and that decision is also no way helpful in opposing the interim maintenance

awarded in favour of the wife against the husband by the revision petitioner.

6) Accordingly, the revision petition is dismissed. No order as to costs. The revision petitioner/respondent before the lower Court to the interim maintenance application is directed to pay or deposit the entire arrears within four months from the date of receipt of this order, failing which remedy is left open to the interim maintenance applicant/wife to enforce according to law.

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

Dr. B. SIVA SANKARA RAO, J

19.08.2016
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[\[1\]](#) AIR 2005 Karnataka 417