

T H E H O N ' B L E S R I J U S T I
C I V I L R E V I S I O N P E T
O R D E R

This revision is filed under Article 227 of Constitution of India challenging the order in I.A.No.524 of 2013 in F.C.O.P.No.1647 of 2012 on the file of the Judge, Family Court, Hyderabad, dissatisfied with the amount awarded towards maintenance to the revision petitioner and her child in I.A.No.524 of 2013 in F.C.O.P.No.1647 of 2012, whereby, an amount of Rs.10,000/- per month was granted towards maintenance to the petitioner and her child, besides granting Rs.10,000/- towards legal expenses.

The basis for claim of the petitioner before the Family Court is that the respondent/husband was drawing more than Rs.50,000/- being an Executive (C & O) in Container Corporation of India, whereas, the petitioner and the child are facing difficulty to meet both ends, to maintain themselves and also to meet necessary expenses like school fees of her child, etcetera. The respondent/husband did not deny the income which he is getting and also the property which he allegedly possessed, as contended by the petitioner. But the Judge, Family Court, Hyderabad awarded meagre amount of Rs.10,000/- towards maintenance per month, besides awarding Rs.10,000/- towards legal expenses to prosecute the proceedings before the Court.

The basis for passing such an order awarding maintenance by the Family Court is an unmarked pay slip produced by the respondent/husband to substantiate his contention that he was drawing net salary of Rs.31,000/- per month after effecting deductions from his salary like provident fund, service tax, loan recoveries,

etcetera.

The Family Court considered the unmarked pay slip filed by husband. A pay slip is required to be marked under Rule 60 of the Civil Rules of Practice, but the Family Court considered the unmarked pay slip, contrary to the procedure and when such a pay slip is not marked, the Trial Court should not have considered while granting maintenance to the petitioner and her child. Therefore, the order passed by the Judge, Family Court, Hyderabad, is illegal and the Family Court passed the order considering extraneous material, which is not marked before the Court.

The present civil revision petition is filed under Article 227 of Constitution of India dissatisfied with the amount awarded towards maintenance. But, a bare look at the order discloses that the Judge, Family Court, Hyderabad awarded maintenance and considered pay slip of the respondent without marking the same. The elementary principle is, unless the document is marked as exhibit, the same cannot be looked into. I am conscious that the present revision petition is filed by the petitioner dissatisfied with the amount awarded towards maintenance. But still, when the Subordinate Court committed an error, this Court can exercise power under Article 227 of the Constitution of India, particularly, when the Trial Court exceeded its power vested on it or passed an order based on extraneous material or evidence. In such case, this Court can exercise power under Article 227 of Constitution of India either on the application of any one of the parties or this Court can also exercise suo motu power, since the power of this Court is supervisory in nature and to keep the Subordinate Court and Tribunals within its limits and work within the powers that are conferred on them. Therefore, even in the absence of any application, or petition

under Article 227 of Constitution of India, this Court can exercise such supervisory power and set-aside the order.

On an overall consideration of material on record, I find that the Judge, Family Court, Hyderabad, passed the order based on extraneous material or evidence, which is impermissible under law. Hence, the order of the Judge, Family Court, Hyderabad is found fault, the order is *Ex facie* erroneous. Hence, the order is liable to be set-aside.

Both the parties did not produce even a scrap of paper in support of their contentions, but insisting this Court for awarding substantial amount of maintenance and the respondent is insisting this Court to confirm the order without discharging the obligation which cast on them, while prosecuting the proceedings before the Court.

In those set of circumstances, I find that it is a fit case to set-aside the order passed by Judge, Family Court under challenge and remand the matter to the Judge, Family Court, Hyderabad, affording an opportunity to both the parties to mark documents as per Rule 60 of the A.P.Civil Rules of Practice and decide the matter afresh. The Judge, Family Court, Hyderabad, is directed to decide the matter within one month from today.

Accordingly, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

M. SATYANARAYANA MURTHY, J

Date:18.08.2016

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