

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3387 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt.03.03.2016 in I.A.No.189 of 2014 in O.P.No.290 of 2013 on the file of Judge, Additional Family Court at Hyderabad, granting maintenance of Rs.12,000/- per month to the respondent No.1 herein besides granting of Rs.10,000/- as legal expenses in a petition filed under Section 24 of Hindu Marriage Act, 1955 (for short ' the Act 1955').

2. For convenience of reference, the parties to the Revision Petition will herein be referred as ranked in I.A.No.189 of 2014 in O.P.No.290 of 2013 by the Judge, Additional Family Court at Hyderabad, through out the judgment.

3. The revision petitioner is the respondent No.1 before the trial Court. Respondent No.1 herein/petitioner filed a Petition under Section 24 of the 1955 Act for grant of *pendent elite* maintenance of Rs.25,000/- per month besides granting of Rs.25,000/- towards legal expenses alleging that her marriage with respondent was performed on 14.09.1999 and blessed with two children. Whereas, the petitioner is residing separately in view of the harassment by the respondent. Respondent filed

O.P.No.290 of 2013 for dissolution of marriage with the petitioner on various grounds.

4. The petitioner is not having any independent source of income sufficient to meet her necessities and whereas the respondent is working in the office of Chartered Accountant and earning Rs.50,000/- per month and thus the respondent has got sufficient means besides possessing movable and immovable property and FDRs in his name. But, he neglected and refused to maintain the petitioner and her children inspite of possessing sufficient means and property to maintain them. Therefore, she sought for interim maintenance, as stated supra, including Legal expenses.

5. Respondent No.1/revision petitioner filed Counter resisting the claim of the petitioner/respondent No.1 herein denying material allegations, *inter alia*, contending that the petitioner has been working as a teacher and possessing sufficient means to maintain herself and she is a qualified woman. The allegation that respondent is working in the office of Chartered Accountant is false and in fact, he already resigned for his employment and working in M/s Srinidhi Block Prints and earning Rs.5000/- per month and therefore, he cannot afford more than Rs.1000/- as maintenance to the petitioner and her children.

6. Considering rival contentions and perusing the material available on record, the trial Court granted maintenance at

Rs.12,000/- per month from the date of petition till the disposal of the main OP besides Rs.10,000/- as legal expenses.

7. Aggrieved by the Order and Decretal Order passed by the trial Court, the present Revision Petition is filed raising several contentions and one of the main grounds is that the petitioner is not working in the office of Chartered Accountant and earning Rs.50,000/- per month, as alleged. But, the trial Court erroneously treated the allegation mentioned in the Counter as admission and awarded maintenance @ Rs.12,000/- per month besides Rs.10,000/- as legal expenses, as the trial Court did not consider the pleadings in proper perspective, without insisting for any proof regarding the income of the revision petitioner, the trial Court awarded maintenance excessively and prayed to set aside the Order passed by the trial Court.

8. During hearing, learned counsel for revision petitioner/respondent No.1 in the OP, filed set of documents as additional evidence before this Court for consideration in the present petition and reiterated the contentions urged in the grounds of appeal.

9. Notice on the respondent's counsel appearing before the trial Court was served i.e., P. Vimala Devi, but she neither appeared nor to get the matter represented through any other person and failed to advance any argument.

10. A bare look at the Order under challenge, in the middle of the para No.6 of the Order, the Judge, Family Court observed

that the respondent admitted that he worked in the office of Chartered Account, but no document is filed to prove that he resigned to the services in the office of Chartered Account and now working as Supervisor in M/s Srinidhi Block Prints. Thus, taking into consideration the contention raised by the learned counsel for revision petitioner in the counter that he resigned from his employment i.e., in the office of Chartered Account, the Judge presumed that the respondent admitted about his working in the office of Chartered Account. In the absence of any documentary evidence to substantiate his contention that he resigned to his services in the Chartered Account office. No doubt, the respondent admitted that he worked in the office of Chartered Accountant, but resigned to his services and no documentary proof is produced either to prove his resignation to his employment in the office of Chartered Accountant or to prove that he is working as Supervisor in M/s Srinidhi Block Prints and earning Rs.5000/- per month.

11. The revision petitioner filed Resignation Letter dt. 30.09.2013 and Letter of Acceptance of Resignation dt. 30.09.2013 by the Chartered Accountant, the Salary Certificate of the respondent Dt. 29.12.2014 and copy of the Salary Certificate of petitioner dt. 29.06.2011. All these documents are only Photostat copies and the revision petitioner did not produce all these documents before the Judge, Additional Family Court at the time of hearing. But, no reason was assigned for his failure to file those documents before the Judge, Additional

Family Court except contending that these papers were missing from the material papers and later it was realized that by oversight those documents were not filed before the trial Court. Therefore, the reason assigned by the revision petitioner is not justifiable since he failed to produce those documents at the time of hearing before the trial Court. But, on that ground, the Order under challenge cannot be set aside.

12. In any view of the matter, the jurisdiction of this Court under Article 227 of the Constitution of India is limited and filing of additional documents in a petition filed under Article 227 of the Constitution of India is in permissible since this Court has to decide the issue based on the material on record while exercising power of superintendence under Article 227 of the Constitution of India to find out whether the trial Court acted within its limits while passing the Order or not. The Order under challenge was passed as the revision petitioner had admitted himself that he worked in the office of Chartered Accountant without producing the Letter of Resignation evidencing termination of his services from the office of Chartered Accountant or at least appointment letter issued by the office of M/s Srinidhi Block Prints. In the absence of such evidence, the Judge, family Court has no option except to believe the contention of the petitioner. Therefore, the Judge, Family Court, did commit no error in passing the Order under challenge and the Order does not call for interference of this Court while exercising power of Judicial Review under Article 227 of the

Constitution of India. Hence, I find no grounds to interfere with the Order passed by the Judge, Additional Family Court, Hyderabad and accordingly, this Civil Revision Petition is liable to be dismissed.

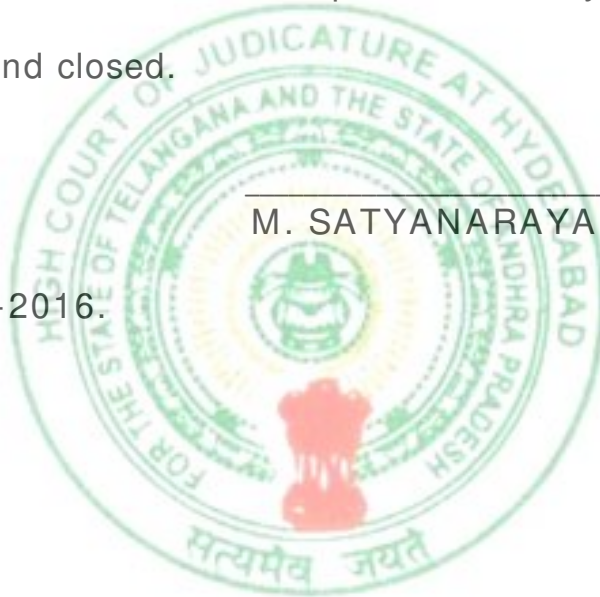
13. In the result, this Civil Revision Petition is dismissed confirming the Decree and Decretal Order dt.03.03.2016 in I.A.No.189 of 2014 in O.P.No.290 of 2013 on the file of Judge, Additional Family Court at Hyderabad. No costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

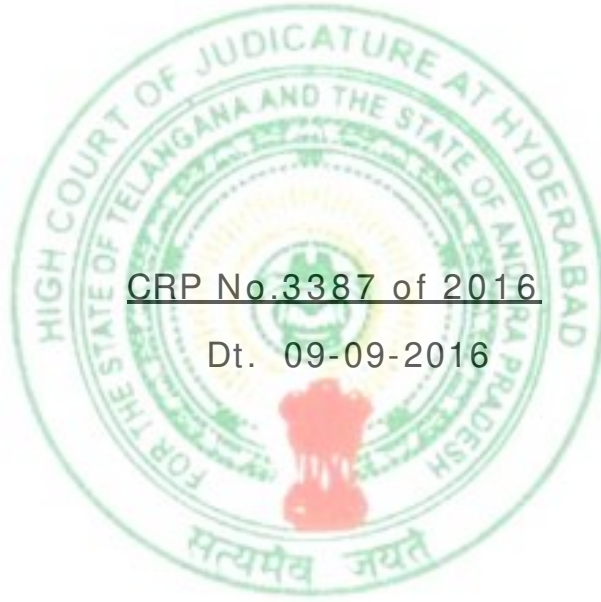
M. SATYANARAYANA MURTHY, J

Date: 09-09-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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