

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3065 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt.30.01.2016 in E.P.No.12 of 2015 in OP No.403 of 2001 on the file of Judge, Family Court, City Civil Court, Hyderabad, whereby the revision petitioner/J.Dr was directed to pay a sum of Rs.20,000/- per month towards maintenance to the respondent herein from the date of the order as the revision petitioner violated the decree and decretal Order in O.P.No.403 of 2001 dt. 16.05.2003 wherein he was directed to take back the respondent herein to lead conjugal life with her within two months, failing which, respondent herein is at liberty to get the same done through Court of law and recover the expenses incurred thereon from the revision petitioner.

2. The revision petitioner is the husband, who is the respondent in O.P.No. 403 of 2001. The respondent herein/J.Dr filed a petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights and the same was decreed by the trial Court, which attained finality. In pursuance of the direction passed in the above O.P.No.403 of 2001, the revision petitioner has to take back the

respondent herein within two months from the date of decree and decretal order, but he did not comply the direction issued by the trial Court. As the revision petitioner violated the order issued by the trial Court, the respondent herein filed a petition under Order 21 Rules 32 and 33 of Code of Civil Procedure (for short' CPC') for execution of the Order dt.16.05.2013 in O.P.No.403 of 2001 claiming Rs.30,000/- per month.

3. The petitioner herein filed Counter denying the material allegations while contending that C.R.P.3691 of 2013 dt. 27.08.2015, this Court observed that the Court can consider the provisions of Order 21 Rules 32 and 33 of CPC and pass appropriate order, by taking into consideration the other attending circumstances, for execution of Section 9 Petition relating to Hindu Marriage Act. But, without following the procedure contemplated under Order 21 Rule 32, no order can be passed directing the revision petitioner/J.Dr/ to pay huge amount of Rs.20,000/- and prayed for dismissal of the execution petition.

4. During enquiry, no witnesses were examined and no documents were marked on either side.

5. Upon hearing argument of both the counsel, the Executing Court issued a direction to the respondent therein/revision petitioner, while recording a finding that he

disobeyed the order of the Court in O.P.No.403 of 2001, ordered to pay a sum of Rs.20,000/- per month to the petitioner therein/respondent herein from the date of the Order.

6. Aggrieved by the Decree and Decretal Order dt. 30.01.2016 in E.P.No.12 of 2015 in O.P.No.403 of 2001, the revision petitioner filed this revision petition by raising several contentions but mainly argued on the ground that the Executing Court failed to follow the procedure under Order 21 Rules 32 and 33 of CPC and without any basis about the income of the revision petitioner, ordered for payment of Rs.20,000/- per month towards maintenance as he is having different source of income and prayed to set aside the Order passed by the Executing Court.

7. During hearing, learned counsel for revision petitioner while reiterating the contentions urged in the Counter before the Executing Court and the grounds urged before this Court, requested to pass appropriate order taking into consideration of other attending circumstances while drawing the attention about maintaining three children, who are college going children, and the order passed by the Executing Court directing him to pay Rs.20,000/- per month is erroneous, apart from that the petitioner therein did not produce any scrap of paper to substantiate that the

respondent therein is carrying on business and getting huge amount from it for every month so as to pay Rs.20,000/- per month to the petitioner therein and prayed to set aside the Order under challenge.

8. On the other hand, learned counsel for respondent herein/D.Hr supported the Order in all respects and made a request to summon the children to appear before this Court to find out whether they are being maintained properly by the revision petitioner and prayed to dismiss the revision petition.

9. The first and foremost contention raised before the Executing Court and this Court is that before passing an order for payment of any amount under Order 21 Rules 32 (4) of CPC, the Court has to record a finding that the respondent/revision petitioner has violated or disobeyed the Order of the Court as required under Order 21 Rule 32 of CPC. Order 21 Rules 32 of CPC deals with the execution of decree for specific performance or restitution of conjugal rights or for an injunction, is as follows:

“ (1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract, or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2).....

(3) Where any attachment under sub rule (1) or Sub-rule (2) has remained in force for six months if the judgment debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application”.

Thus, a special procedure is prescribed under Order 21 Rules 32 and 33 of CPC for execution of a decree for restitution of conjugal rights.

10. Sub Rules 1 and 2 of Order 21 Rule 33 of CPC mandates the Court to record a finding regarding disobedience of the Order of the trial Court.

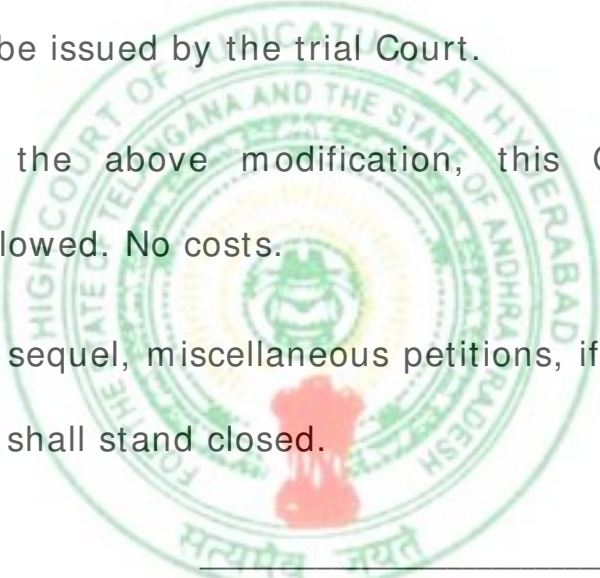
11. As seen from the decretal Order of the trial Court, the revision petitioner was directed to take back the respondent herein to lead marital life within two months from the date of order i.e., on 16.05.2013. But, the revision petitioner did not comply the direction and basing on the material on record, the Executing Court recorded a finding that the respondent therein disobeyed the decree and decretal order in O.P.No.403 of 2001. Therefore, the Executing Court had complied the requirement under Order 21 Rules 33 (1) (2) of CPC by recording a finding as to the dis-obeyence of the decree and decretal order passed in O.P.No.403 of 2001. On this ground, the Order passed by the Executing Court cannot be set aside.

12. The other contention raised before this Court is that the respondent herein/wife did not produce any scrap of paper regarding the income of the revision petitioner though an allegation was made in the petition that he is earning Rs.1,20,000/- per month besides possessing properties in the name of his binami. This fact is not substantiated by any material and no piece of evidence is brought on record to substantiate that the revision petitioner is getting Rs.1,20,000/- per month either by carrying on any business or from any employment. In the absence of any evidence, coming to the conclusion that the revision petitioner is getting Rs.1,20,000/- per month is not justifiable. In such case, ordering payment of Rs.20,000/- per month appears to be a penal in nature. However, it is the other contention of revision petitioner that he is managing the children, who are college going children and thereby spending huge amount for their educational expenses, living expenses and in such a case, it is difficult for the revision petitioner to pay Rs.20,000/- per month. No doubt, the revision petitioner has to spend certain expenditure for both education and living expenses, besides medical and other incidental expenses. Even assuming for a moment that the petitioner is earning substantial amounts from his business, directing the revision petitioner to pay Rs.20,000/- to the individual respondent herein is

excessive. Therefore, considering the attending circumstances like maintenance of three children incurring living, educational, medical expenses and other incidental expenses, I find that it is a fit case to reduce the amount from Rs.20,000/- to 15,000/- per month. Therefore, the Order passed by the Executing Court is modified directing the revision petitioner to pay an amount of Rs.15,000/- per month from the date of Order of the Executing Court i.e., 30.01.2016 and continue to pay the same till compliance of direction to be issued by the trial Court.

13. With the above modification, this Civil Revision Petition is allowed. No costs.

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

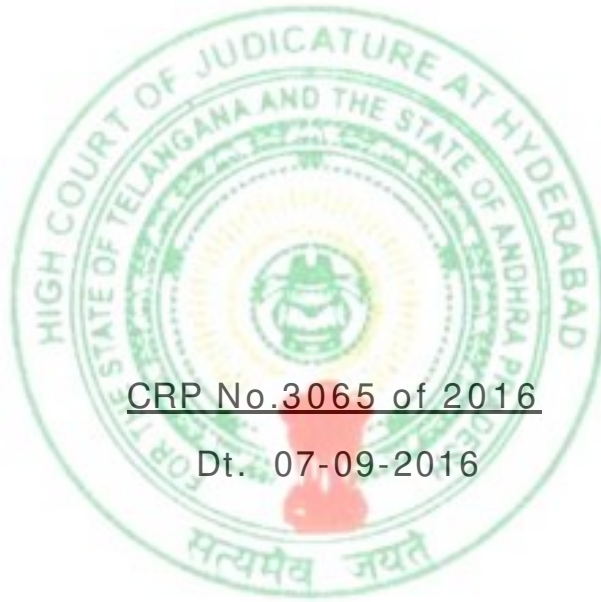


M. SATYANARAYANA MURTHY, J

Date: 07-09-2016.

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