

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2806 OF 2016

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the order dated 28.04.2016 passed in I.A.No.238 of 2016 in FCOP.No.562 of 2015 by the Judge, Family Court, Secunderabad, granting temporary injunction restraining respondent Nos.2 and 3 – respondent Nos.3 and 4 herein from releasing 1/5th of the retirement benefits of the respondent No.1 – revision petitioner herein pending disposal of the main petition.

For the sake of convenience, the parties to the revision will be referred hereinafter throughout the order as arrayed before the Family Court.

The petitioners filed petition before the Judge, Family Court under Order XXXIX Rules 1 and 2 of Code of Civil Procedure (for short, hereinafter referred to as “C.P.C.”) to grant interim injunction restraining the respondent Nos.2 and 3 from releasing retirement benefits of the respondent No.1 pending disposal of the main petition alleging that the petitioner No.1 filed the main petition claiming marriage expenses and expenses of professional education of petitioner No.2. Petitioner No.1 stated that her marriage with the respondent No.1 was solemnised on 16.08.2004 on a deferred dowry of Rs.25,000/- as per Muslim rites and customs, and they blessed with a female child i.e.

petitioner No.2 on 01.02.2007 during their wedlock. It was the 2nd marriage for both i.e. petitioner No.1 and respondent No.1 and the respondent No.1 already blessed with four children through his deceased first wife but he did not disclose the details of the children of his first wife and informed that alternative arrangements were being made for them and they would not reside with them. However, the children of the deceased 1st wife of the respondent No.1 started living with them, she used to look after them with love and affection, but the children of his 1st wife never behaved properly with her and developed hatred attitude towards her, the harassment increased gradually and the respondent No.1 favoured the children of his 1st wife and forced her to adjust with them and abused her, she tolerated all the harassment with a hope that the respondent No.1 would mend his ways, but instead of reducing the harassment, it has increased, as such since June, 2012 the 1st petitioner along with her daughter, petitioner No.2 are residing with her mother.

Petitioner No.1 further stated that the 1st respondent has sent a copy of Talaqnama dated 28.06.2011 issued from the office of Qazi basing on the divorce declaration submitted by him, in the said divorce declaration he categorically stated that he would take the responsibility of the petitioner No.2 and the said Talaq had been unilaterally pronounced by the respondent No.1, as such she filed a petition vide O.P.No.1380 of 2012 on the file of Additional Judge, Family

Court, Hyderabad to declare that the Talaq as null and void and the same is pending for disposal. Respondent No.1 provided good education and performed the marriages of the children of his deceased 1st wife by spending huge amounts ignoring the petitioner No.2, who was entirely dependent on the meagre amount of maintenance granted in M.C.No.88 of 2012. The 1st respondent was not even taking steps to provide good education to the petitioner No.2, while so, the 1st respondent is retiring on attaining the age of superannuation in the month of April, 2016 and would get huge amount besides pension and other benefits. If the 1st respondent is allowed to withdraw the retirement benefits, it is difficult for the petitioners to realise the amount, if any decree passed in their favour against the respondent No.1 – revision petitioner herein and therefore, sought for injunction during pending of the Original Petition.

The respondent No.1 filed counter denying the allegations made in the affidavit annexed to the petition while admitting his marriage with the petitioner No.1 and birth of petitioner No.2 during wedlock. He denied the alleged non-disclosure of the details of the children born through his 1st wife, who are four in number and also denied the alleged harassment.

He further contended that as per the orders of the Supreme Court in SLP filed by the petitioner No.1, he is paying a monthly maintenance of Rs.16,000/- to the

petitioners without any default till date and the petitioner No.1 wrongfully challenged the Talaq given by him as per Muslim law by filing O.P.No.1380 of 2012. He admitted that he was going to retire in the month of April, 2016. He further contended that the alleged harassment and failure to provide good education to the 2nd petitioner are all false and that he is willing to meet the marriage expenses of the 2nd petitioner and prayed for dismissal of the petition.

Upon hearing the argument of both the counsel, the Judge, Family Court granted interim injunction directed the respondent Nos.2 and 3 to withhold the 1/5th of the retirement benefits of the respondent No.1 pending disposal of the Original Petition.

Aggrieved by the order passed by the Judge, Family Court in I.A.No.238 of 2016 in FCOP No.562 of 2015, the present revision is filed raising several contentions mainly contending that the FCOP is not maintainable and the petition for grant of temporary injunction is equally not maintainable. Therefore, granting injunction restraining the respondent Nos.2 and 3 – respondent Nos.3 and 4 from releasing 1/5th of the retirement benefits of the respondent No.1 – revision petitioner is not in accordance with law and prayed to set aside the order impugned in this revision and dismiss the I.A.No.238 of 2016 in FCOP.No.562 of 2015.

Respondent Nos.1 and 2 (petitioner Nos.1 and 2 before the Family Court) filed F.C.O.P. under Section 26 read with

Order VII Rule 1 of C.P.C. It is a plaint for all practical purposes and they are seeking permanent injunction restraining respondent Nos.2 and 3 therein from releasing 1/5th of the retirement benefits of the 1st respondent by filing petition under Order XXXIX Rules 1 and 2 of C.P.C.

As per Section 10 of the Family Courts Act, 1984, subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to the suits and proceedings before Judge, Family Court and for the purposes of the said provisions of the Code, Family Court shall be deemed to be a Civil Court and shall have the powers of such Court.

Therefore, the Judge, Family Court is competent to issue temporary injunction by exercising power under Order XXXIX Rules 1 and 2 of C.P.C. in view of the powers conferred on the Judge, Family Court by Section 10 of Family Courts Act. Hence, the Original Petition filed before the Judge, Family Court is only plaint though it is filed as Original Petition. Therefore, in such case, there is no interdict on the powers of the Judge, Family Court to pass any interim order under Order XXXIX Rules 1 and 2 of C.P.C.

During hearing, this Court questioned about the maintainability of the revision under Article 227 of Constitution of India against the order passed under Order XXXIX Rules 1 and 2 of C.P.C. by the Judge, Family Court.

Sri P.Bhakthavatsal, learned counsel for the revision petitioner, would contend that no appeal is maintainable against the interlocutory order passed by the Judge, Family Court irrespective of the provision under which the order is passed, and such orders are revisable under Article 227 of Constitution of India.

When the O.P. filed before the Family Court, which partakes the character of original suit filed under Section 26 read with Order VII Rule 1 of C.P.C., the interlocutory application filed before the Judge, Family Court under Order XXXIX Rules 1 and 2 of C.P.C. can be treated like any other petition filed in regular Courts. When an order is passed under Order XXXIX Rules 1 and 2 of C.P.C., an appeal lies under Order XLIII Rule 1 of C.P.C. but not a revision. According to sub-section (1) of Section 19 of the Family Courts Act, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. According to sub-section (2) of Section 19 of the Family Courts Act, no appeal shall lie from a decree or order passed by the Family Court with the consent of the parties provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 before the commencement of the Family Courts (Amendment) Act, 1991. As per sub-section (3) of Section 19 of the Family Courts Act, every appeal under

this Section shall be preferred within a period of 30 days from the date of the judgement or order of a Family Court. According to sub-section (4) of Section 19 of the Family Courts Act, the High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction and pass an order under Chapter IX of the Code of Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order and as to the regularity of such proceeding. As per sub-section (5) thereof, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court. According to sub-section (6) thereof, an appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more judges.

Here, the order under challenge is only interlocutory order i.e. an arrangement during pendency of the main petition, but in view of sub-section (1) of Section 19 of the Family Courts Act, the same is not appealable; but it is revisable. Therefore, the order under challenge is revisable.

However, the question involved in this matter is that the revision petitioner was retired in the month of April, 2016 on attaining the age of superannuation, but the Court granted temporary injunction during pendency of the Original Petition restraining the respondent Nos.2 and 3 – respondent Nos.3 and 4 herein from releasing 1/5th of the retirement benefits of

the 1st respondent – revision petitioner herein. On the last two occasions, this Court directed the learned counsel for the revision petitioner to furnish the details of the amount the revision petitioner is going to receive, but he fairly expressed his inability to furnish those details as the revision petitioner is out of country. The very maintainability of Original Petition seeking injunction without claiming any particular amount towards marriage and educational expenses is doubtful; however, learned counsel for the revision petitioner did not stress on the maintainability of original petition and grant of interim relief in such original petition. Hence, I need not examine the maintainability of original petition and grant of interim relief in I.A.No.238 of 2016 in FCOP.No.562 of 2015.

The Judge, Family Court having found that the revision petitioner is responsible to perform the marriage of respondent No.2 and it is evident from the conduct of the revision petitioner that he is not interested in the respondent No.1 – wife and even went to the extent of seeking divorce through Qazi. This conduct itself creates any amount of doubt as to discharge of his responsibility to perform the marriage of the respondent No.2 herein. If the revision petitioner is allowed to withdraw entire amount, certainly the respondent Nos.1 and 2 herein will be left without any means to realise the decree, if any, passed in their favour.

The trial Court found *prima facie* case in favour of the respondent Nos.1 and 2 herein and that they will be put to

inconvenience and irreparable loss in case no injunction is granted.

Taking into consideration of the facts and circumstances of the case, I find that it is a fit case to direct the respondent Nos.3 and 4 to deposit the 1/5th of retirement benefits of the revision petitioner into the Family Court, Secunderabad to the credit of the original petition in terms of Order XXXIX Rule 10 of C.P.C. and on such deposit, the Judge, Family Court is directed to keep the same in the interest fetching Fixed Deposit initially for a period of two (2) years in any Nationalised Bank and renew the same, subject to the stage of the O.P. The petitioners in Original Petition are entitled to withdraw the said amount subject to result of the Original Petition.

In the result, the revision is disposed of with the above directions. No order as to costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:19.09.2016
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