

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case Nos. 1435 & 1665 of 2017

COMMON ORDER:

The genesis of these two criminal revision cases filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') is the order, dated 20.09.2016, of the learned Judge, Family Court, Ranga Reddy District, passed in M.C.no.45 of 2015.

1.1 By the said impugned orders, the learned Judge, Family Court, partly allowed the said maintenance case and directed the sole respondent therein to pay monthly maintenance @ Rs.20,000/- each to the petitioners 1 and 2 from the date of the petition and further directed him to pay Rs.1,11,500/- per annum towards the annual school fees of the 2nd petitioner either directly to the 1st petitioner or by remitting the same to the account of the Delhi Public School, Nacharam, Secunderabad branch.

2. Aggrieved of the said orders, the respondent/husband filed Criminal Revision Case no.1435 of 2017. Not being satisfied with the quantum of maintenance awarded, the petitioners, i.e., the wife and child of the respondent, filed Criminal Revision Case no.1665 of 2017.

2.1 The parties in these revisions shall hereinafter be referred to as the petitioners and respondent as arrayed in M.C.No.45 of 2015 for the sake of convenience and clarity.

3. I have heard the submissions of *Sri P.Nagendra Reddy*, learned counsel for the petitioners, and of *Sri M.Krishna Rao*, learned counsel for the respondent. I have perused the material record.

4. To avoid repetition and to keep it simple, I shall deal with the pleadings, evidence and submissions while dealing with the following points that arise for determination.

5. The points for determination are:-

- 1) *Whether the petitioners made out valid and sufficient grounds for awarding maintenance?*
- 2) *Whether the maintenance awarded to the petitioners by the Family Court is not adequate in the circumstances stated by the petitioners?*
- 3) *Whether the 1st petitioner/wife is not entitled to claim any maintenance in the facts and circumstances stated by the respondent?*
- 4) *Whether in the facts and circumstances of the case, the maintenance amounts awarded to the petitioners require upward or downward revision?*
- 5) *To what relief?*

6. POINTS:

To begin with, it is necessary to advert to the pleadings of the parties.

6.1 The case of the petitioners, in brief, is this:

The 1st petitioner is the legally wedded wife of the respondent. Their marriage was performed, on 17.11.2010 as per Hindu Rites and Customs, at Eden Gardens, King Koti, Hyderabad. The parents of the 1st petitioner paid Rs.5,00,000/- to the respondent, besides Rs.50,000/- each to the mother and two sisters of the respondent and Rs.10,000/- each to his brothers. Thus, in all a sum of Rs.6,70,000/- has been paid by the parents of the 1st petitioner to the respondent and his family members at the time of marriage. Apart from the above said cash, they also gave 20 tulas of gold to the respondent. After the marriage, the 1st petitioner joined the respondent at Singapore, on 10.12.2010, and stayed there for about six months, i.e., till 12.05.2011. During the initial ten days period, their marital life was smooth and happy.

Thereafter, the respondent started abusing the 1st petitioner. The sisters and mother of the respondent also used to call on telephone and abuse the 1st petitioner. The respondent used to follow the telephonic instructions of his mother and sisters and used to physically and mentally harass the 1st petitioner. During her stay at Singapore, she had conceived. When the gestation was three months, the respondent sent her back to her parents' house at Hyderabad on the pretext of reducing hospital expenses. From that date, the respondent started neglecting the 1st petitioner and did not care even to provide for bare medical expenses. All the medical and incidental expenses were met by her parents. On 06.11.2011, she was blessed with a son, the 2nd petitioner herein. The same was informed to the respondent. The major expenditure was met by her parents. The father of the 1st petitioner performed the cradle ceremony of the 2nd petitioner at Hotel Blue Orchids, Habsiguda, Hyderabad, by spending huge amounts. The respondent was legally bound to maintain the petitioners. He is earning sufficiently and is capable of maintaining the petitioners. However, he is deliberately avoiding maintaining them. The 1st petitioner contacted the respondent several times on phone and requested him to pay maintenance. But, the respondent avoided to answer the calls under the pressure of his mother and sisters and neglected to maintain the petitioners. Hence, the petitioners have no other option except to file the petition seeking maintenance.

6.2 On the respondent entering appearance in the case, the Family Court referred the parties to mediation centre for conciliation. The matter was not settled. Thereafter, the respondent failed to attend the Court, in spite of granting sufficient time for filing counter. Accordingly, he was set ex parte, on 03.08.2016.

6.3 At trial, the 1st petitioner was examined as PW1 and exhibits P1 to P5 were marked on the side of the petitioners. As already noted, the husband

filed one revision aggrieved of the *ex parte* orders granting maintenance to the petitioners. The petitioners filed the other revision not being satisfied with the quantum of maintenance awarded to them.

6.4 Learned counsel for both the parties made submissions in line with the respective pleaded cases of the parties.

6.5 Learned counsel for the respondent would submit as follows: 'The order impugned is only an *ex parte* order. Huge maintenance amounts @ Rs.20,000/- each is awarded to the petitioners and the respondent was further directed to pay more than Rs.1,00,000/- annually towards educational expenses of the 2nd petitioner. Further, the maintenance was awarded from the date of the petition filed in the year 2015. The impugned order was passed without giving fair opportunity to the respondent. The 1st petitioner is an educated person. She has completed her M.Sc., at London. Even though she is a highly educated woman, she is intentionally not working, only to harass this respondent. Without intimation to this respondent, the 1st petitioner got the 2nd petitioner admitted in Delhi Public School, which is an expensive and branded educational institution. She did so only to harass this respondent. This respondent was saving funds in a chit of Margadarshi Chit Funds Company in the name of the 1st petitioner. The 1st petitioner has withdrawn an amount of Rs.10 lakhs from out of the said chit without intimation to this respondent. The Court below failed to note that the respondent is willing to live with the petitioners and lead a happy marital life with the 1st petitioner. The impugned order occasioned in failure of justice. By the order impugned, this respondent is being put to great hardship. An opportunity may be given to the respondent to contest the maintenance case on merits by setting aside the impugned *ex parte* orders.

6.6 Learned counsel for the petitioners would submit as follows:

In the circumstances stated in the petition for maintenance, the petitioners are constrained to seek maintenance and also educational expenses of the 2nd petitioner. The respondent having entered appearance in the case has failed to file his counter. The matter was also referred for conciliation. The conciliation failed. Thereafter, the respondent remained *ex parte* as he has no tenable defence. The petitioners also produced exhibit P3, school fee receipts, exhibit P4, statement of account-cum-fee structure of the 2nd petitioner. Exhibit P1 is the marriage certificate, exhibit P2 is the Birth certificate of the 2nd petitioner and exhibit P5 is the document showing the salary particulars of the respondent. The Court below having taken on record the evidence affidavit of PW1 and having permitted her to exhibit the above stated documents disposed of the maintenance case *ex parte*, as the respondent failed to resist the application by filing a counter. The petitioners produced exhibit P5. A perusal of the same reflects that the salary of the respondent is 4750 Singapore Dollars, which is equivalent to Rs.2,06,000/- . Having appeared before the Family Court, he had left for Singapore without filing counter and failed to contest the matter. The very attitude of the respondent lays bare that he is not bothered about the petitioners and is not interested in taking care of them. Therefore, the trial Court is justified in passing the *ex parte* order. However, considering the facts and the income of the respondent and also his attitude and the plight of petitioners, the trial Court ought to have awarded maintenance as claimed by the petitioners keeping in view the financial, economic and social status of the family. Since the maintenance awarded to the petitioners is not adequate and is not sufficient for them to live in reasonable comfort and with dignity, the petitioners are constrained to file the revision.

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. Learned counsel for the respondent finally urged as follows: In order to defend the litigations, the respondent came down to India from Singapore and that in view of his employment, which is his source of livelihood, he has to necessarily return to Singapore and that in the absence of any other option, the respondent had left for Singapore to report to duty. His employment is only a contract employment. He is not getting fixed income. Had he not returned to Singapore at the relevant time, he would have lost his job. Therefore, he cannot be faulted for leaving for Singapore. He is always taking good care of the petitioners. In C.C.No.116 of 2015 on the file of XIV Metropolitan Magistrate, Cyberabad, at L.B.Nagar, during the cross-examination of PW1, it was brought out that this respondent celebrated the 21st day of the 2nd petitioner on a grand scale and presented a gold chain and gold bangles to the child besides Rs.1,00,000/- during the said functions. He has also presented gold and cash of Rs.1.5 lakhs to the 1st petitioner during her Srimantham function. He further spent a huge amount on the 1st birthday of the 2nd petitioner by meeting all the expenses. He deposited a sum of Rs.21,19,343/- in the account of PW1. All the said material facts are admitted facts. However, as the respondent remained *ex parte*, he could not file his counter and bring on record all these admitted facts, which are in his favour. In the light of the admissions made by the 1st petitioner in the aforesaid case and huge amounts already paid and gifts already given, there is no justification on the part of the 1st petitioner in claiming maintenance by complaining that the respondent neglected to maintain the petitioners. Therefore, it is just and fair to allow his revision and remand the MC to the Family Court to give a fair and reasonable opportunity to the respondent to contest the matter on merits. If the matter is allowed to be decided on merits, no prejudice would be caused

to the petitioners. The respondent is prepared to abide by any conditions that may be imposed by the Court while setting aside the *ex parte* order and remitting the matter to the Family Court for disposal afresh.

9. The learned counsel for the petitioners strongly opposed for remanding the matter to the trial Court *inter alia* contending that the respondent deliberately remained *ex parte* having left for Singapore and that his request does not merit consideration and that in any view of the matter, the meagre maintenance amounts awarded cannot be said to be just and reasonable considering the financial and economic condition as well as the social status of the family and that remand of the matter to the trial Court would be of no avail and that this Court can decide the matter finally and that if the matter is remitted, the petitioners suffer serious loss on account of the delay in disposal of the case.

10. The facts borne out by the record show that in the maintenance case filed by the wife and child of the respondent, he had remained *ex parte* after conciliation has failed. Thereafter, the Family Court having considered the evidence of PW1 and the exhibits filed, awarded maintenance @ Rs.20,000/- each to the petitioners 1 and 2 and further directed the respondent to pay Rs.1,00,000/- and odd towards annual educational expenses of the 2nd petitioner. The respondent having relied upon certain above stated admissions of his wife made in C.C.No.115 of 2015 on the file of XIV Metropolitan Magistrate would contend that the wife of the respondent had withdrawn Rs.10 lakhs which was invested in a chit in Margardarsi Chit Funds and that he had already deposited into her account, a sum of Rs.21 lakhs and odd and that he has got strong defence in the maintenance case and that in view of his financial status and economic condition, he is not in a position to pay huge maintenance awarded to the petitioners, in any view of the matter.

11. Having regard to the facts and submissions, this Court is of the considered view that the revision case filed by the respondent in Crl.R.C.No.1435 of 2017 can be allowed and the *ex parte* order, dated 20.09.2016, can be set aside for the limited purpose of remitting the M.C.no.45 of 2015 to the Family Court for disposal afresh on merits, as in the well considered view of this Court such a course would sub-serve the ends of justice and would facilitate in giving a quietus to the dispute once and for all. However, to avoid any hardship to the petitioners and to protect the interest of both parties, it is just and fair to impose adequate terms while remitting the matter to the Family Court.

12. Accordingly, the revision filed by the petitioners in Crl.R.C.No.1665 of 2017 is dismissed and the revision filed by the respondent in Crl.R.C.No.1435 of 2017 is allowed and the order, dated 20.09.2016, passed by the learned Judge, Family Court, Ranga Reddy District in M.C.No.45 of 2015 is set aside and the above said MC is remitted to the Family Court for disposal afresh on merits and in accordance with the procedure established by law subject to the following conditions.

- I. The respondent shall file his counter in the MC within three weeks from the date of receipt of a copy of this order and shall also deposit a sum of Rs.2,00,000/- (Rupees two lakhs only) to the credit of the afore-stated M.C within the said time;
- II. On compliance of the above said conditions by the respondent, the trial Court shall proceed with the trial of the maintenance case and shall endeavour to dispose of the same on merits and in strict accordance with the procedure established by law as expeditiously as possible and preferably within a period of three months from the date of such restoration; the petitioners are at liberty to withdraw the amount deposited by the respondent by following the procedure established by law.

- III. In any event, if the disposal of the MC takes more than three months time, the respondent shall pay from the 4th month onwards, Rs.10,000/- to the 1st petitioner and Rs.20,000/- to the 2nd petitioner towards their monthly maintenance, as an interim measure, till the disposal of the MC as directed supra.
- IV. However, on failure of the respondent to file his counter and make the deposit of the amount as directed supra, his revision case shall stand dismissed and the order impugned in the revision and the revision case filed by the petitioners alone shall stand revived. It is needless to state on such revival the revision case of the petitioners shall alone be taken up by this Court for disposal on its merit;

Pending miscellaneous petitions, if any, shall stand closed.

11th August, 2017
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JUSTICE M. SEETHARAMA MURTI