

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4520 OF 2014

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the order dated 31.12.2014 in I.A.No.868 of 2012 in H.M.O.P.No.54 of 2012 on the file of II Additional Senior Civil Judge, Nandyal in awarding maintenance, during the pendency of O.P. filed for divorce, in exercising power under Section 24 of the Hindu Marriage Act.

The respondent filed the said application claiming interim maintenance at Rs.20,000/- per month and Rs.50,000/- towards legal expenses, alleging that her marriage with the respondent was performed on 24.12.2012 at TTD Kalyanamandapam, Koilkuntla as per Hindu rites and caste customs and their marriage was consummated. She contended that the petitioner herein demanded additional dowry of Rs.2,00,000/- and subjected her to cruelty from the date of their marriage and finally she was necked out from the house and all the mediations were failed. She also contended that the petitioner herein is working as a Stenographer in Railway Employees Co-operative Credit Society and earning income not less than Rs.32,000/- per month, so he possessed sufficient means to maintain her, but he neglected and refused to maintain her. It is also contended that the petitioner herein, at the time of marriage, received dowry of Rs.6,00,000/- besides 10 tulas of gold ornaments. Even the minimum rate of interest prevailing in market fetches on the above amount is more than Rs.13,500/- per month. Hence, she claimed maintenance and legal expenses as stated above.

The petitioner herein filed counter denying the allegations made in the said petition *inter alia* contended that the respondent herein is residing at Banaganapalli. Prior to filing of the petition, opened S.B. Account No.3899 in Rayalaseema Grameena Bank in which a sum of Rs.2,00,000/- was remitted. The respondent herein own a house at Banaganapalli, her brother own a posh house at Kurnool and she is working as teacher in a private school, earning a sum of Rs.10,000/- per month and she is a B.Ed., qualified teacher. Therefore, she is disentitled to claim maintenance and prayed for dismissal of the petition.

The trial Court, upon hearing argument of both the counsel, allowed the petition awarding maintenance at Rs.10,000/- per month till the disposal of the said O.P. and Rs.25,000/- towards legal expenses to the respondent herein.

Aggrieved by the order passed by the trial Court, the present revision is filed on various grounds mainly contending that the petitioner is residing at Hyderabad and he has to take care of his old aged parents, besides maintaining himself while meeting other expenses for residence, etc., but the trial Court did not consider his contentions and awarded exorbitant amount as maintenance and legal expenses. Therefore, requested this Court to dismiss the said petition by setting aside the order passed by the trial Court and prayed to allow this revision.

Learned counsel for the petitioner submits that the petitioner has to maintain his parents besides meeting other incidental expenses while working as a Stenographer in Railway Employees Co-operative Credit Society, Hyderabad, a private association. Therefore, awarding maintenance of Rs.10,000/- is

excessive and apart from that Rs.25,000/- towards legal expenses is exorbitant.

Learned counsel for the respondent submits that the petitioner neglected and refused to maintain her during pendency of the petition and she has no other alternative except to defend the case. To meet the huge expenditure for the case and for her maintenance, she filed this petition and requested this Court to confirm the order passed by the trial Court.

The relationship between the petitioner and the respondent is not in dispute. But the dispute is with regard to quantum of maintenance. The petitioner is working as an employee in Railway Employees Co-operative Credit Society at Hyderabad and drawing gross salary of Rs.38,365/- per month and after deductions the net pay was Rs.14,442/- as extracted in para 11 of the order passed by the trial Court. The pay slip of the petitioner shows that he is contributing P.F., P.T., LIC premiums under four policies besides discharge of loan availed by him including special loan, LIC G&S, Cumulative Monthly Term Deposit (CMTD), SH.MBF and ST.MBF. But payment of premium under four LIC policies, CMTD and LIC G&S and loans etc., are only for the personal benefit and most of them are savings of the employee and those amounts cannot be deducted from the salary while fixing monthly maintenance.

The Apex Court in **KALYAN DEY CHOWDHURY v. RITA DEY CHOWDHURY NEE NANDY**¹ held that 25% of the net salary of an employee shall be paid as maintenance to the wife and in **DR.KULBHUSHAN KUNWAR V. SMT.RAJ KUMARI**², the Apex Court took similar view and finally concluded that 25% of the

¹ 2017 SCC Online SC 440

² AIR 1971 SC 234

salary of husband can be awarded as maintenance to the wife. If that is taken into consideration, 25% of the salary would come to Rs.9,591/- excluding D.A., H.R.A., etc. Therefore, strictly adhering to the principle laid down by the Apex Court in the above judgments, the petitioner is liable to pay maintenance at Rs.9,591/- per month to the respondent.

One of the contentions of the learned counsel for the petitioner is that T.A. of Rs.3,200/- cannot be included in the salary and it is being paid for short period, but it is not known whether T.A. is being paid for short period or long period, but it form part of gross salary as per the salary slip of the petitioner produced before this Court. Therefore, the contention of the petitioner that the amount paid towards T.A. cannot be included in the salary is not acceptable by applying the principles laid down in the recent judgment referred supra.

In view of the same, the amount awarded by the trial Court is reduced to Rs.9,591/- per month towards maintenance during pendency of the said O.P. while affirming the order passed by the trial Court in awarding legal expenses of Rs.25,000/-.

With the above modification, the Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

JULY 26, 2017

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