

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2627 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/ husband is directed against the order, dated 24.03.2017, of the learned Judge, Additional Family Court, Hyderabad, passed in I.A.No.547 of 2016 in O.P.No.996 of 2016.

2. I have heard the submissions of *Sri K.V.Paghuveer*, learned counsel appearing for the petitioner/ husband, and of *Sri Bankatlal Mandhani*, learned counsel appearing for the respondent/ husband. I have perused the material record.

2.1 By the order impugned in this revision, the learned Judge, Additional Family Court, Hyderabad, allowed the petition filed by the petitioner. The operative portion of the order impugned, verbatim, reads as under:

“ In the result, petition is allowed granting interim maintenance of Rs.6,000/- per month to the petitioner no.1 and Rs.5,000/- per month to petitioner No.2 from the date of petition. Respondent shall pay arrears of maintenance in three equal monthly installments commencing from the month of April, 2017. Respondent shall henceforth pay interim maintenance amount on or before 5th day of every English Calendar month. No costs.”

Aggrieved thereof, the respondent/ husband filed this revision petition.

2.2 For the sake of convenience and clarity, in this revision, the parties shall hereinafter be referred to as the petitioner and the respondent as arrayed in the application filed seeking maintenance.

3. The 1st petitioner is the legally wedded wife of the respondent and that the 2nd petitioner, aged eleven months, is their son, is admitted. The petitioners filed the main/ original petition seeking verbatim the following reliefs:

“a) Pass a decree of judicial separation between petitioner no.1 directing the respondent not to come to the house of petitioner’s house bearing no. 1-10-122/ 8/ 2 to 8, Ashoknagar, Hyderabad or any other place and not to harass or torture the petitioner no.1 in any manner till he creates confidence to the first petitioner about his good behaviour and safety to the life of petitioners 1 and 2 for her restitution of marital life with him, as well as not to use any force or create illegal atmosphere from removing the custody of 2nd petitioner from the custody of first petitioner. b) Pass a decree directing the respondent to pay Rs.10,000/- and 5,000/- to the petitioners 1 and 2 p.m.

In the said OP, the 1st petitioner made several allegations against the respondent.

4. In the application seeking interim maintenance, the 1st petitioner stated as follows: “The respondent is doing real estate business and earning more than Rs.50,000/- per month. The respondent and his father disclosed the said facts to the 1st petitioner and her father. She and her son require minimum Rs.10,000/- and Rs.5,000/- respectively for their maintenance. Her parents are presently incurring Rs.15,000/- per month on their maintenance. The respondent is bound under facts and in law to maintain the petitioners. The petitioners require minimum Rs.50,000/- towards legal expenses and the respondent is liable to pay the said amounts towards maintenance and legal expenses.” In the counter, the respondent having admitted the relationship

denied all the other allegations made against him and *inter alia* pleaded as follows: "This respondent is not earning Rs.50,000/- per month at any point of time. This respondent is pursuing his career as an employee with Talwar Hyundai Car Dealers at Hyderabad and was getting a gross salary of Rs.26,000/- till his marriage. After the marriage with the 1st petitioner, the respondent resigned his job on account of ill-treatment meted out to him by the 1st petitioner. Till date, he is not having fixed source of income. He is getting a meager amount of Rs.15,000/- per month intermittently depending upon his deals in real estate business. There is no cause of action for the petitioners."

5. At the time of inquiry into the interlocutory application before the trial Court, no evidence, either oral or documentary, was adduced. In the order impugned, the Court below noted that the relationship is admitted and that the respondent failed to produce any *prima facie* material that the 1st petitioner is having immovable property or other sources of income and therefore, both the petitioners, who are the wife and the minor son of the respondent, are entitled to award of interim maintenance. The Court below further noted that the respondent stated in the counter that he is getting a meager income of Rs.15,000/- and that he is working as an employee of Talwar Hyundai Car Dealers at Hyderabad and that he is getting a gross salary of Rs.26,000/- and that because of the ill-treatment meted out to him by the 1st petitioner, he resigned his job. Since, he did not produce any document to show that he resigned his job, the trial Court held that it can safely be taken that his monthly income is Rs.26,000/- and that he can easily pay Rs.6,000/- and Rs.5,000/- per month respectively to the petitioners 1 and 2. Accordingly, the trial Court awarded the said amounts as interim maintenance to the petitioners 1 and 2 by observing that the said course would meet the ends of justice.

6. At the hearing learned counsel for both parties reiterated the respective pleaded case of the parties.

7. Learned counsel for the respondent forcefully contended as follows:

The Court below erroneously concluded that the respondent is getting monthly income of Rs.26,000/- as he failed to produce any documentary evidence that he resigned his job. Even assuming for a moment that the respondent is earning Rs.26,000/- per month is correct, yet, award of maintenance in a total sum of Rs.11,000/- to the petitioners is unjust and unfair as the above said income is the gross salary of the petitioner and that the interim maintenance awarded is more than 50% of the net salary of the respondent. The trial Court failed to consider the fact that the respondent is not getting the income of Rs.26,000/- per month as his specific defence is that on account of the ill-treatment meted out to him by the 1st petitioner, he has resigned his job and that he is getting a meager amount of Rs.15,000/- per month intermittently depending upon his deals in real estate business. Hence, the impugned order may be set aside. Or in the alternative, the maintenance amounts awarded to the petitioners by the trial Court may be reduced to reasonable amounts.

8. Per contra, learned counsel for the petitioners submitted that the respondent is legally bound to maintain the petitioners, who are his wife and minor son, and that the respondent is admittedly an able bodied person and that in the present day cost of living, unless interim maintenance as awarded by the Court below is maintained, it would be very difficult for the petitioners to sustain themselves and survive.

9. I have given earnest consideration to the facts and submissions.

10. In the considered view of this Court, there is no reason to deny award of interim maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for the sustenance of the wife. Unless the husband establishes that his wife has income of her own and needs no financial support from him, she cannot be denied interim maintenance from the husband. So far as the child, who is a minor, the petitioner/father is obliged under facts and in law to pay reasonable amount of monthly interim maintenance to the child. The interim maintenance awarded shall be adequate for sustenance and sufficient for meeting expenses towards food, clothing and shelter, besides essential incidental expenses. In case of children, it takes in its compass the educational expenses also of the children. The law is well settled that the maintenance has to be awarded keeping in view the social status and economic & living conditions of the family; and, the maintenance awarded to the wife and child must be sufficient to enable them to live in reasonable comfort and with dignity. The provision for interim maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for interim maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of interim maintenance under the Act is subject to final determination of their rights in the main case. The provision provides for speedy remedy for providing interim maintenance to the wife and eligible children. Be that as it may. In this context, it is profitable to quote a passage from the judgment rendered by the High Court of Delhi in Chander Prakash Bodhraj v. Shila Rani Chander Prakash [AIR 1968 Delhi 174] wherein it has been opined thus: "An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for

such able-bodied person to show to the Court cogent grounds for holding that he is unable due to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

11. The petitioners did not produce any evidence before the Family Court, either documentary or otherwise, to show that the respondent is having any other sources of income apart from his salary. The petitioners also did not produce the salary certificate, if any, of the respondent. The respondent also did not produce his salary certificate. He is an able bodied person. Even going by the admission of the respondent in the counter, his gross salary was Rs.26,000/- at one point of time. He failed to produce any document to establish that he resigned his job. Hence, after giving allowance for certain deductions from out of his said salary, if the correctness or otherwise of the quantum of maintenance awarded in a total sum of Rs.11,000/- per month is considered, it is apparent that it works out to nearly 50% of the net salary of the respondent. Therefore, as rightly contended by the learned counsel for the respondent, it is noticeable that the award of interim maintenance at the rate of Rs.11,000/- per month, in all, to the petitioners is unjust and unfair, by any standards. In the absence of *prima facie* proof that the respondent is earning more than Rs.26,000/- per month and that he has other sources of income, the monthly interim maintenance respectively awarded @ Rs.6,000/- and Rs.5,000/- to the petitioners 1 and 2 needs downward revision, in the facts and circumstances of the case.

12. Viewed thus, this Court finds that the revision can be disposed of by modifying the impugned order appropriately.

13. In the result, the Civil Revision Petition is allowed in part and the interim monthly maintenance amounts awarded to the 1st petitioner @ Rs.6,000/- and @ Rs.5,000/- to the 2nd petitioner are accordingly reduced to Rs.4,000/- and Rs.3,000/- per month respectively. The said amounts are payable by the respondent to the petitioners from the date of the petition in view of the fact that the petitioners are not having any sources of income and are living at the mercy of the parents of the 1st petitioner. The respondent shall either pay to the petitioners or deposit to the credit of O.P.No.996 of 2016, the arrears of interim maintenance in two equal monthly installments within two months from the date of receipt of a copy of this order. The interim maintenance amounts, if any, already paid shall be given credit. He shall continue to pay the future monthly interim maintenance as awarded by this Court to the petitioners 1 and 2 regularly without fail, until the disposal of the OP on the file of the Additional Family Court, Hyderabad.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

31.08.2017
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M. SEETHARAMA MURTI, J