

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3150 of 2016

ORDER:

The petitioner-wife filed this civil revision petition, under Article 227 of the Constitution of India, assailing the order, dated 16.04.2016, of the learned Judge, Additional Family Court, Visakhapatnam, passed in IA.No.57 of 2015 in FCOP.No.1243 of 2014 not having been satisfied with the quantum of interim maintenance allowances awarded to her and her child.

2. I have heard the submissions of *Sri P. Raj Kumar*, learned counsel appearing for the petitioner-wife. Though the respondent is served with notice, he did not enter appearance. I have perused the material record.

3. The facts which are necessary to be stated in a nutshell are as follows:

The respondent-husband filed the aforesaid FCOP.No.1243 of 2014 under Section 13(1)(ia) of the Hindu Marriage Act, 1955, [the Act, for short] for dissolving the marriage between the spouses by granting a decree of divorce. The said OP is pending on the file of Family Court-cum-V Additional District Court, Visakhapatnam. The petitioner also filed OP.No.975 of 2014 against the respondent-husband on the file of the Family Court, Visakhapatnam, for restitution of conjugal rights. In the aforesaid FCOP filed by the husband, the petitioner filed the above mentioned Interlocutory Application under Section 24 of the Act requesting to grant interim maintenance @ Rs.50,000/- and Rs.25,000/- per month respectively to her and her minor child. The respondent filed a counter resisting the said application. At the time of hearing, no oral evidence was adduced on either side and no documents were marked on the side of the petitioner. However, exhibits B1 to B3 were marked on the side of the respondent-husband. On merits and by the order impugned in the revision, the Additional Family Court, Visakhapatnam, awarded interim maintenance @

Rs.12,500/- per month in all, that is, Rs.10,000/- to the petitioner and Rs.2,500/- to the minor child from the date of petition, that is 07.01.2015, and gave further directions regarding payment of arrears of maintenance and regular monthly interim maintenance allowances. As already noted, aggrieved of the quantum of interim maintenance allowances awarded, the petitioner-wife filed this revision petition.

4. Before proceeding further, it is necessary to note the respective cases of the parties.

4.1 Shorn of un-necessary details, the case of the petitioner is this: - 'After estrangement between the spouses, the petitioner is living, along with her child, in her parents' house at Visakhapatnam. The petitioner gave birth to a premature boy in 7th month, that is, on 26.10.2013, at Manipal hospital, Visakhapatnam. The respondent has not paid any amount to meet the delivery expenses of the petitioner though he claimed the amount under the health insurance policy covering the delivery expenditure. Though the delivery expenses are reimbursed by the insurance company to the respondent, he has not either paid any amount to the petitioner towards delivery expenses or meet the said expenses. The petitioner is unemployed. She has become a burden on her parents. It is the legal and moral obligation of the respondent to look after his wife, the petitioner, and the new born boy. The respondent has not visited the petitioner's house since several months and even did not contact the petitioner on telephone at any point of time and made no attempts to take back the petitioner and the new born child. The petitioner is very much interested in going back to her matrimonial house to have matrimonial society with the respondent. Though the parents of the petitioner intimated and invited the respondent and his family members to come and perform the naming ceremony and other ceremonies of the new born child, the respondent and his family members did not turn up. Hence, the petitioner filed the

application for restitution of the conjugal rights in July, 2014. There is an agreement, dated 09.02.2012, between the respondent and his first wife at the time of dissolution of their marriage in OP.No.1469 of 2011 on the file of Additional Family Court, Visakhapatnam, and as per the said settlement the respondent shall not have any further communication with his first wife and her daughter. The respondent also accordingly stated to the petitioner herein and believing the said settlement, the petitioner's marriage with the respondent was performed. However, the respondent has been violating the terms and conditions in between him and his first wife and is continuing his relationship with his first wife and daughter and he and his family members are harassing the petitioner with an intention to get rid of her and to enable the petitioner to join his first wife and daughter. The respondent is neglecting to maintain the petitioner and her new born son. He is working as a software engineer in a company and is drawing a net salary of Rs.20,00,000/- per annum. He is having movable and immovable properties in Visakhapatnam and Hyderabad and is getting Rs.25,000/- as rents from the immovable properties besides having shares worth about Rs.30 to 40 lakhs. The petitioner is unable to maintain herself and her child. The petitioner requires a minimum interim maintenance @Rs.50,000/- and Rs.25,000/- per month for her and her child.'

4.2 Per contra, the case of the respondent-husband as stated in his counter, in brief, is this:

The material allegations in the petitioner's affidavit are false. They are denied. The allegations that the respondent is having sufficient means and drawing a salary of Rs.20 lakhs per annum and that he is getting Rs.25,000/- per month towards rents from immovable properties at Visakhapatnam and Hyderabad and that he is having shares worth Rs.30 to 40 lakhs are all false and untenable allegations. The same are invented for the purposes of the present petition. Hence, the said allegations are denied. He is working in

Microsoft company and is drawing salary of Rs.60,000/- per month and out of the same he has to pay Rs.40,000/- per month towards EMI for the flat purchased by him for the purpose of leading happy conjugal life with the petitioner. The said flat was purchased after his marriage was performed with the petitioner with the fond hope that both of them can lead happy marital life. The said flat is the only shelter of this respondent. He has to look after his parents who are residing at Visakhapatnam. He has to meet his own expenditure on travel and boarding. Nobody is even present to cook and serve food to him and he is taking food from restaurants. Because of the attitude of the petitioner, this respondent's health is also severely affected and he is suffering from blood pressure and his blood pressure reached 240; and, he was also affected with Diabetes and he is incurring expenditure on his medical treatment. The petitioner studied MCA and is working in some software company and drawing a decent salary. She can lead smooth life with her income. She is not entitled to any maintenance. This respondent is not having any properties much less properties yielding monthly rents. There are no *bona fides* in the petition. The petition is liable to be dismissed.

5. At the hearing, learned counsel for the petitioner while reiterating the case of the petitioner submitted as follows:

The Court below failed to take into account the actual income that the respondent is receiving in the form of salary and rents from immovable properties. The petitioner and her child are entitled to much more maintenance allowance than that was granted. The court below failed to properly appreciate the facts and contentions of the petitioner. The orders insofar as granting meagre amounts as interim maintenance without considering the social status and economic & living conditions of the family and financial position of the respondent is unsustainable and suffers from legal and

factual infirmities. The Court below ought to have awarded interim maintenance at the rates claimed in the petition of the petitioner.

6. I have given earnest consideration to the facts and submissions. The petitioner is the wife of the respondent and under the lawful wedlock she gave birth to a male child is not in dispute. Whatever may be the reasons, there were disputes between the spouses and those disputes lead to estrangement is admitted. The petitioner and the respondent are living separately is also not in dispute. The male child is in the custody of the petitioner is also not in dispute. 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 children who are minors, the respondent-husband/ father is obliged under facts and in law to pay reasonable amount of monthly maintenance to them. The maintenance awarded shall be adequate for sustenance, and sufficient for meeting expenses towards food, clothing and shelter, besides essential incidental expenses. In case of school going children, it takes in its compass the educational expenses also. 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 children must be sufficient to enable them to live in reasonable comfort and with dignity. The provision for 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 is subject to final determination of their rights in the main proceeding. The provisions for maintenance or pendente lite maintenance provide for speedy remedy for providing maintenance/ interim maintenance to

the wife and eligible children. In any proceeding under this Act where it appears that the wife has no independent income sufficient for her and her child's support and the necessary expenses of the proceedings, the Court may on the application of the wife order the husband to pay to the wife the expenses for proceedings and maintenance pendente lite.

7. In the case on hand, the respondent contended in his counter that the wife is an MCA and is working in a software company and is earning a decent income. He did not furnish details of such employment and failed to prove his said contentions. The wife contends that she is a house wife and is living on the mercy of her parents. Therefore, it is sufficiently established that the wife and child are entitled to claim interim maintenance. Though the wife filed the present revision not having been satisfied with the quantum of interim maintenance allowances awarded to her and her child, the respondent though served with notice has not entered appearance and is not resisting the revision petition.

8. Coming to the quantum of interim maintenance, the case of the petitioner is that the respondent is working in Microsoft company and is drawing a salary of Rs.20,00,000/- per annum and that he owns immovable and movable properties at Hyderabad and Visakhapatnam and that he is receiving income of Rs.25,000/- per month towards monthly rents and, therefore, he is a substantial person and that according to social status, living & economic conditions of the family, the interim maintenance allowances awarded to her and her child are meagre and that the said allowances are not sufficient for her and her child to lead a decent life in the present day cost of living. Exhibit B1, the pay slip for November, 2014, according to the submissions made before this Court shows that the gross salary of the respondent is Rs.1,47,214/- per month and that his net salary is Rs.78,993/- that is approximately Rs.79,000/- per month. One of the contentions of the respondent is that after the marriage

with the petitioner, he purchased a flat and that he is paying EMIs @ Rs.40,000/- per month and that he has an obligation to maintain his parents, who are staying at Visakhapatnam, and that he has also to meet his medical expenses as he is suffering from high blood pressure and diabetes. He does not say the ages of his parents and their family status and as to whether they are retired employees drawing any pensions or whether they own properties. He does not also say as to whether he has got any brothers and sisters. One of the contentions of the petitioner is that despite a settlement with his first wife, and after the marriage with this petitioner, the respondent has not severed his connections with his first wife and daughter and that he neglected to maintain the petitioner and her child. As per law, his primary responsibility is to maintain his wife and son. The respondent's net salary is Rs.79,000/- per month even in the month of November, 2014, is not in dispute. In the normal course of events, his salary might have increased considerably by now. A copy of the IT return of the assessment year 2015-16 which is filed with the material papers shows that the gross total income of the respondent is Rs.25,66,014/- . A copy of the IT return for the year 2016-17 shows his total taxable income is Rs.29,96,420/- . As already noted, the respondent did not enter appearance and is not resisting the application by either filing a counter or making any submissions.

9. On the above analysis of the facts and submissions, this Court finds that the respondent is a substantial person of sound financial and economic status and that he has got sufficient capacity to pay a considerable amount as interim maintenance allowances to his wife and son and therefore, the interim maintenance allowance awarded by the Court below @ Rs.12,500/- per month to the petitioner and her son is not just and fair in the facts and circumstances of the case. Viewed thus, this Court holds that the interim maintenance allowances awarded can be enhanced to Rs.20,000/- per month in all (that is @

Rs.15,000/- to the petitioner and Rs.5,000/- to the child) from the date of the petition, that is, 07.01.2015.

10. In the result, the Civil Revision Petition is partly allowed and while partly setting aside the order impugned, the interim maintenance allowances are awarded accordingly @ Rs.15,000/- and Rs.5,000/- per month respectively to the petitioner and her child, from the date of the petition, that is, 07.01.2015. The respondent shall pay or deposit the arrears of interim maintenance as per this order in two equal monthly instalments, that is, within two months from the date of receipt of a copy of this order. The future monthly interim maintenance allowances at the above rates shall be paid or deposited every month on or before 5th of every calendar month. If the petitioner had already opened an SB account and furnished the details of the same to the respondent, the respondent shall deposit the arrears as well as future maintenance allowances to the credit of the said account or otherwise to the credit of FCOP.No.1243 of 2014 on the file of the Additional Family Court, Visakhapatnam.

Miscellaneous petitions pending, if any, shall stand closed.

04.10.2017
Vjl

M. SEETHARAMA MURTI, J