

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.3399 of 2017

ORDER

This petition under Article 227 of the Constitution of India is filed assailing the order in I.A.No.435 of 2015 in O.P.No.1830 of 2014 dated 02.06.2017 passed by the Judge, Family Court, City Civil Court, at Hyderabad allowing the petition in part directing the respondent to pay a sum of Rs.10,000/- p.m. to the first petitioner and Rs.5,000/- p.m. to the second petitioner from the date of the petition till further orders and the said amount shall be paid on or before 10th of every month and the arrears till the date of the order shall be paid within three months, in a petition filed under Section 24 of Hindu Marriage Act.

2. Assailing the order, the respondent in the petition filed this revision under Article 227 of the Constitution of India raising several contentions which will be discussed at the appropriate stage in this order.

3. For sake of convenience, the parties will be referred as arrayed in the revision petition.

4. First respondent-Smt.Arepalli Shilpa Reddy is the wife and the second respondent-Arepalli Omkar Reddy is the son born during the wedlock of the petitioner and first respondent herein. The respondents herein filed petition under Section 24 of Hindu Marriage Act seeking interim maintenance of Rs.20,000/- p.m. to the first respondent and Rs.10,000/- p.m. to the second respondent alleging that the first respondent is the legally wedded wife and during wedlock, the petitioner and first respondent gave birth to a child, the second respondent herein. As the petitioner started harassing the first respondent physically and mentally having addicted to vices like drinking and gambling etc.

neglected both the respondents and the first respondent suffered insults, harassment and humiliation in the hands of the petitioner, parents and she was beaten indiscriminately and necked out from the house asking her not to stay with him and failed to take care of both the respondents not providing maintenance allowance to both the respondents.

5. It is further contended that both the respondents have no independent source of income or earning capacity and unable to maintain themselves; whereas the petitioner is working as Software employee earning Rs.1,00,000/- per month besides possessing residential and commercial property and getting not less than Rs.2 lakhs rent per month. The second respondent is studying in All Saints School at Gunfoundry and required to pay Rs.50,000/- per month. Therefore, the respondents sought for interim maintenance as stated above.

6. The petitioner herein filed counter admitting the relationship inter alia contended that the petitioner never refused and neglected both the respondents (petitioners before the trial Court) and the first respondent used to leave him and frequently causing mental and physical cruelty and deserted voluntarily. The petitioner herein also denied the alleged harassment and owning of any property and income he is getting on the property while admitting that he is earning Rs.20,000/- per month working as recruiter in B.P.O. Company. Therefore, the petitioner herein is not liable to pay interim maintenance as claimed by the respondents herein and prayed for dismissal of the petition.

7. The trial Court framed the points for consideration regarding entitlement of respondents herein to claim interim maintenance during the pendency of main petition i.e. OP No.1830 of 2014 seeking decree for divorce on the ground of cruelty under Section 13(1)(1a) of Hindu Marriage Act.

8. Upon hearing the arguments of both the counsel, the trial Court passed the impugned order awarding interim maintenance to both the respondents as referred supra.

9. Aggrieved by the order, the present revision is filed on various grounds; mainly on the ground that the respondents did not produce any material to substantiate their claim that the petitioner herein is earning huge amount of Rs.1,00,000/- per month by way of salary and Rs.2 lakhs as rent from various properties; it is further contended that the first respondent is working as receptionist and getting salary of Rs.20,000/- per month and therefore, she is disentitled to claim maintenance, but the trial Court did not consider these two contentions in proper perspective.

10. It is further contended that the trial court ought to have taken the salary of the petitioner as Rs.26,750/- and the petitioner is maintaining himself and his parents who are old aged 79 and 66 years respectively suffering from different old age ailments and the petitioner is incurring not less than Rs.15,000/- per month for treatment of his parents and therefore, granting interim maintenance at such rate is excessive and prayed for setting aside the impugned order.

12. Learned counsel for the petitioner during hearing contended that the second respondent who is not a party to the main petition is not entitled to claim maintenance under Section 24 of Hindu Marriage Act and thereby granting interim maintenance to the second respondent- Arepalli Omkar Reddy @ Rs.5,000/- per month is erroneous apart from that the trial Court while granting maintenance to the second respondent failed to consider the material on record and in the absence of any material to establish that the petitioner is earning more than Rs.1,00,000/-

per month, the amount granted towards interim maintenance is bad in law and prayed for set aside the same.

13. Learned counsel for the petitioner placed reliance on the unreported judgment of Madras High Court in S. SUMATHI AND ANOTHER v. R. SHARAVANAKUMAR (CRP (PD) No.486 of 2013) wherein it was held that the children of the parties to the proceedings under Hindu Marriage Act are not entitled to claim maintenance and prayed for setting aside the impugned order by allowing the revision petition.

14. Whereas Si K. Rathanga Pani Reddy, learned counsel for the respondents supported the order in all respects placing reliance on the judgment of this Court reported in LANKA VENKATAPATHI RAO v. SMT.LANKA VIJAYASREE¹. He also contended that in the judgment of Madras High Court, the High Court referred the judgment in JASBIR KAUR SEHGAL (SMT.) v. DISTRICT JUDGE, DEHRADUN AND OTHERS² and even in the judgment of Apex Court, the Apex Court held in para 8 that the court has to grant maintenance keeping in mind the children living with her who are to be maintained by wife. Therefore, the children who are living with the mother are also entitled and requested to confirm the order passed by the trial Court.

15. Considering rival contentions and perusing the material on record, the point that arises for consideration is:

Whether both the respondents are entitled to claim interim maintenance against the petitioner herein during the pendency of O.P.No.1830 of 2014, if so, at what rate?

16. POINT: It is an undisputed fact that the marriage between the petitioner and the first respondent was performed as per Hindu Rights and

¹ 2008(6) ALT 218

² (1997) 7 SCC 7

customs and blessed with child who is second respondent herein and not a party to O.P.No.1830 of 2014 and now joined as party to the impugned I.A. filed under Section 24 of the Hindu Marriage Act claiming interim maintenance. Unless the second respondent is impleaded himself as party to the petition, he cannot claim any right by way of interim order in the petition filed under Section 24 of the Hindu Marriage Act. But, this Court in MEKA PRAKASH v. MEKA DEEPA RANI AND ANOTHER³ placing reliance on Division Bench judgment of this Court in NARENDRA KUMAR MEHTA v. SUPAJ MEHTA⁴ and JASBIR KAUR SEHGAL (SMT.) 2nd cited supra and another judgment of RUTA DUTTA AND ANOTHER v. SUBHENDU DUTTA⁵ held that it is obvious that not only the wife but the minor children are also entitled to interim maintenance in an application filed under Section 24 of Hindu Marriage Act and rejected the contention of the revision petitioner-husband that the minor child is not entitled for interim maintenance under Section 24 of the Hindu Marriage Act as it has no substance. Similar view is expressed by this Court in LANKA VENKATAPATHI RAO case 1st cited supra and this court relied on the judgment JASBIR KAUR SEHGAL (SMT.) case 2nd cited supra and other two judgments. The consistent view taken by this Court is that a child born during wedlock is also entitled to claim maintenance under Section 24 of the Hindu Marriage Act. But, the Madras High Court took a different view in S. SUMATHI AND ANOTHER v. R. SHARAVANAKUMAR (CRP (PD) No.486 of 2013). But, strangely relied on JASBIR KAUR SEHGAL (SMT.) case 2nd cited supra which is contrary to the principle laid down therein. But, the Apex Court made it clear that while granting maintenance to the wife, the maintenance of children who are under the custody is also to be taken into consideration. The judgment of Madras is not binding precedent on us but in the judgment of High Court, the Judge referred Sections 24 and 26 of Hindu Marriage Act. The proviso

³ 2012(3) ALD 48

⁴ AIR 1982 AP 100

⁵ (2005) 6 SCC 619

mandated to decide such application within 60 days and similarly the proviso to Section 26 of the Act which deals with an order for custody of minor children i.e. interim orders shall be decided within 60 days from the date of service of notice on the respondents. But, Act No.49 of 2001 of Marriage Laws (Amendment) Act, 2001 has no bearing to the facts of this case. The two judgments of this Court made it clear that the children are also entitled to claim maintenance under Section 24 of the Hindu Marriage Act, but made the wife alone who has no independent income sufficient for her and necessary expenses of the proceedings may on application entitled to claim relief under Section 24 of the Hindu Marriage Act. The scope of Section 24 of the Act is expanded by Division Bench and Single Judge of this Court in three judgments referred supra. In the later judgment in ANU KAUL v. RAJEEV KAUL⁶ the Apex Court considered the scope of Section 24 of the Hindu Marriage Act and upheld the order passed by the court granting maintenance to the children also. In one of the judgments in CHIRURUPATI SAMBA SIVA RAO v. CHIGURUPATI VIJAYA LAXMI⁷ the Apex Court by exercising power under Article 149 of the Constitution of India converted the order passed under Section 24 of the Act into 125 Cr.P.C. But, this court has no power to pass such an order since Article 149 of Constitution of India is not conferred on this Court. Even if JASBIR KAUR SEHGAL (SMT.) case 2nd cited supra is taken into consideration, the first respondent is entitled to claim maintenance but while granting maintenance, the court has to take into consideration the fact that she is under obligation to maintain children and provide education to them. Therefore, the first respondent is entitled to claim maintenance and the court has to award maintenance considering the children who are living with her and their education etc. Therefore, granting interim, maintenance to the second respondent appears to be

⁶ (2009) 13 SCC 209

⁷ (1997) 11 SCC 84

beyond the scope of Section 24 of the Act since he is not a party to the main petition but filed the I.A. without impleading himself as party. In such a case, the second respondent is not entitled to claim interim maintenance. But, the Court can grant maintenance keeping in mind the custody of the minor child by the mother, the first respondent herein for educational expenses of the second respondent. Therefore, the court is bound to grant maintenance following the principle laid down in JASBIR KAUR SEHGAL (SMT.) case 2nd cited supra. Moreover, this Court, as discussed above, extending the jurisdiction of this court to grant maintenance even to the children under Section 24 of the Hindu Marriage Act as two judgments of single judge and Division Bench are binding on this Court. Therefore, following the judgments referred supra granting maintenance to the first respondent and second respondent cannot be faulted.

17. The other contention is that the court has to grant maintenance not exceeding 25% of the income of the husband. The trial Court in para 6(iii) of the order has observed that as per the salary certificate for the month of September, 2015, the petitioner was working as attendant in CES Limited and getting salary of Rs.26,750/- per month and if the principle laid down in KALYAN DEY CHOWDHURY v. RITA DEY CHOWDHURY NEE NANDY⁸, the total amount to be awarded as interim maintenance under Section 24 of the Hindu Marriage Act to wife shall not exceed 25%. The petitioner admitted in para 3 of the counter that the first respondent was insisting to transfer share of the property of the petitioner in her favour. Taking advantage of it, it is contended that the petitioner possessed certain share in the family property, but whether it is fetching income or not, is not known. If the principle laid down in KALYAN DEY CHOWDHURY case 6th cited supra, the respondents 1 and 2 are at best entitled to 1/4th of the

⁸ 2017 SCC OnLine SC 440

income of the petitioner which comes to Rs.26,750/- divided by 4 = Rs.6,687.50 ps. which can be rounded up to Rs.6,700/- per month. But, this principle laid in KALYAN DEY CHOWDHURY case 6th cited supra was not brought to the notice of the trial Court and therefore, the trial court granted maintenance of Rs.15,000/- to both the respondents in total. Hence, applying the principle laid down in KALYAN DEY CHOWDHURY case 6th cited supra and in DR. KULBHUSHAN KUNWAR v. SMT. RAJ KUMARI⁹ the interim maintenance awarded by the trial Court is reduced to 1/4th of the salary of the petitioner i.e. Rs.6,700/- per month.

18. In the result, the revision petition is allowed in part. The impugned order in I.A.No.435 of 2015 in O.P.No.1830 of 2014 dated 02.06.2017 passed by the Judge, Family Court, City Civil Court, at Hyderabad is modified directing the revision petitioner to pay a sum of Rs.6,700/- p.m. to both the respondents from the date of the petition filed in the trial Court till further orders and the said amount shall be paid on or before 10th of every month. The arrears up to this date shall be paid within a period of three months from the date of this order. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY, J

Date:24-07-2017
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⁹ AIR 1971 SC 234

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Date:24.07.2017

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