

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4681 of 2017

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner assailing the orders, dated 11.07.2017, of the learned Judge, Family Court, Secunderabad, passed in I.A.No.698 of 2016 in FCOP No.76 of 2016.

2. I have heard the submissions of *Sri Manu*, learned counsel for the revision petitioner/ wife, and of *Sri K.K.Chakravarthy*, learned counsel for the respondent/ husband. I have perused the material record.

3. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

The respondent/ husband filed FCOP No.76 of 2016 against the wife, petitioner herein, under Section 10(ix) of the Indian Divorce Act, 1869, requesting to grant a decree of divorce dissolving the marriage solemnized between the parties, on 08.08.2013, which is null and void. The wife is resisting the said OP. In the said FCOP, the petitioner/ wife filed the afore-stated interlocutory application under Section 36 of the Indian Divorce Act, 1869, seeking interim maintenance/ *pendente lite* allowance @ Rs.25,000/- per month. The respondent/ husband filed a counter and resisted the application. By the orders impugned in this revision petition, the learned Judge, Family Court, dismissed the petition of the wife. Therefore, the petitioner/ wife is before this Court.

4. Whatever the reasons for the matrimonial disputes, it is not in dispute that the wife is living separately from the husband after estrangement between the spouses. On various allegations, the husband

filed the matrimonial OP, which the wife is resisting by raising various allegations in her defence. Which one of the two versions is correct has to be judged only after full-fledged trial in the FCOP. However, on the ground that she was neglected to be maintained and that she has no income or source of income, the wife claimed interim maintenance/ *pendente lite* allowance @ Rs.25,000/- per month. Whereas, the husband submits that he is a pensioner and that he is getting a total pension of Rs.24,862/- per month and that the wife is gainfully employed and is earning Rs.80,000/- per month and that she is also having other sources of income and properties and therefore, she is not entitled to any interim maintenance allowance.

5. Be that as it may. The Court below observed that exhibit P1, Family Pension papers, exhibit P2, Salary certificate of one Satyam, exhibit R1, marriage certificate, exhibit R2, copy of bank passbook, exhibit R3, copy of encumbrance certificate, and, exhibit R4, letters from Assistant Pension Payment Officer, do not advance the case of the petitioner/ wife. It also noted that exhibit R2 discloses that the respondent/ husband is getting a pension of Rs.24,862/- per month; exhibit R4 disproves the contention of the petitioner/ wife that the respondent/ husband is getting family pension; and, that exhibit R1, marriage certificate, discloses that the petitioner/ wife is working as Medical Transcriptionist, but, the said fact is suppressed by the petitioner/ wife. Having so observed, the learned Judge of the Family Court dismissed the petition of the petitioner/ wife and refused to grant any interim maintenance/ *pendente lite* allowance to her.

6. Learned counsel appearing for the petitioner submits as follows:

‘The respondent/husband is a Senior Section Engineer in Electrical Carriage Work Shop, South Central Railway, Lallaguda, Secunderabad. During his service, he has drawn a salary of Rs. 1,20,000/- per month. He is getting a monthly pension of Rs. 40,100/-, which is equivalent to his basic pay. He is also having huge sums in the form of retirement benefits besides commuted pension. He is a substantial person. He failed to establish that the wife is employed in any particular concern and that she is earning any particular sum of money as salary. He did not produce any documentary evidence in that regard. However, the Court below erroneously relied upon exhibit R1, marriage certificate, which reflects that the petitioner/wife worked as Medical Transcriptionist, and unjustly refused to grant interim maintenance/ *pendente lite* allowance to the petitioner/ wife and that the petitioner/ wife is starving.’ He would further submit that one of the contentions of the petitioner/ wife is that exhibit R1 is a fabricated document and that therefore, the order impugned is unsustainable.

7. Learned counsel for the respondent/ husband supported the orders of the Court below by reiterating the observations in the impugned order, which are already extracted supra in this order.

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

9. The petitioner's/ wife's contention is that the husband is drawing a salary of Rs. 1,20,000/- while in service and that he is getting a monthly pension of Rs. 40,100/-, which is equivalent to his basic pay and that he had received huge retirement benefits besides commuted pension amount and that he is a substantial person and that she is unemployed and is not earning any income and that she is depending upon the mercy of her parents. Though exhibit R1 shows that at one

point of time, the petitioner/ wife worked as Medical Transcriptionist, her contention is that since five years, she is unemployed and that she is now aged about 50 years and that she is not in a position to secure any employment. Further, though exhibit P4, pension slip issued by the State Bank of India discloses that the total pension paid in April, 2017 was Rs.26,466/-, the respondent's taxable income was shown as Rs.3,07,970/-. This document also shows that the respondent commuted his pensionary benefits and received commuted pension upto 29.02.2032. It is also the case of the petitioner/ wife that the respondent/ husband received huge retirement and pensionary benefits.

10. In the considered view of this court, there is no reason to deny award of interim maintenance allowance 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. The interim maintenance awarded shall be adequate for sustenance and sufficient for meeting expenses towards food, clothing and shelter, besides essential incidental expenses. 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 must be sufficient to enable her 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 even the order of maintenance under the Code

of Criminal Procedure is subject to final determination of the rights of the spouses in a civil Court. The instant provision provides for speedy remedy for providing interim maintenance to the wife.

11. Reverting to the case on hand, in the light of the contentions of the parties and the legal position obtaining, the learned Judge, Family Court, ought to have examined three aspects; viz., (i) Whether the wife made out valid and sufficient grounds for awarding interim maintenance/ *pendente lite* allowance to her; (ii) And, if so, whether the petitioner/wife is entitled for award of any interim maintenance allowance? And, if so, to what amount?; and, (iii) Whether the respondent/husband made out valid and sufficient grounds, which disentitle the wife to claim interim maintenance/ *pendente lite* allowance? Be that as it may. The twin grounds for refusing to award interim maintenance to the wife as stated in the impugned order are that the husband is getting a monthly pension of Rs.24,862/- and that exhibit R1, marriage certificate, which shows that the wife is working as Medical Transcriptionist, belies the contention of the wife that she is not working. As per the admitted facts and contentions, the marriage was solemnized on 08.08.2013. The wife contends that exhibit R1 is a fabricated document; and that she is unemployed since five years and that she being now aged about 50 years is not in a position to secure any employment and that she is presently not employed. All these contentions and rival contentions which the learned Judge, Family Court, ought to have examined were not examined before the order impugned is passed. And, the Family Court did not advert to the core questions, which the Court is required to advert to and answer before either granting or refusing to grant interim maintenance/ *pendente lite* allowance for a wife.

12. On the above analysis and for the reasons assigned, this Court finds that the order impugned is liable to be set aside and that the matter requires to be remitted to the Family Court for disposal afresh in accordance with the procedure established by law after giving opportunity to both the sides to adduce documentary evidence, as regards the respective means, incomes, source of incomes, as well as the assets, if any, besides social and economic status of the family and other relevant aspects.

13. In the result, the Civil Revision Petition is allowed. The order, dated 11.07.2017, passed in I.A.No.698 of 2016 in FCOP No.76 of 2016 is set aside. The said application in I.A.No.698 of 2016 is remitted to the Family Court, Secunderabad, for disposal afresh, in accordance with the procedure established by law after giving opportunity to both the parties to produce documentary evidence as regards the respective means, incomes, sources of incomes, if any, and the social status and economic and living conditions of the family. It is made clear that if any one of the parties files an application to summon the records from a public or other office to establish the necessary relevant material facts, the trial Court shall consider such application(s) in an appropriate manner. If the parties intend to file any such application(s), they shall do so within a period of ten days from the date of receipt of a copy of this order for appropriate consideration of the same on merits by the Family Court. However, the learned Judge, Family Court, Secunderabad, shall endeavour to dispose of the application now remitted for disposal afresh, as expeditiously as possible, preferably within one month from the date of receipt of a copy of this order.

There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

18.09.2017

Note:- Issue CC by 04.10.2017
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