

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4013 of 2011

ORDER :

This revision is filed, under Article 227 of Constitution of India, challenging the order, dated 26.07.2011, passed by the Senior Civil Judge, Kovvur, in I.A.No.77 of 2010 in H.M.O.P.No.59 of 2010.

2. The petitioner herein is husband and he filed O.P.No.59 of 2010 for dissolution of marriage. During pendency of the petition, wife-respondent herein filed I.A.No.77 of 2010 under Section 24 of the Hindu Marriage Act for grant of Rs.5,000/- per month towards maintenance for herself and for her daughter and Rs.3,000/- towards legal expenses alleging that she being a wife unable to maintain herself and also to meet legal expenses.

3. The contention of the respondent-wife before the trial Court is that the petitioner is working as a teacher and earning Rs.30,000/- per month as salary besides possessing huge properties and used to get more than Rs.1,00,000/- from the properties by way of rent and also from the agricultural land per annum. Thus, the petitioner herein possessed sufficient means to pay the maintenance to her as he was getting Rs.30,000/- per month as salary. But, the petitioner herein denied liability to pay maintenance to the respondent on the ground that she is doing private job at Nellore and earning Rs.4,000/- per month and that his daughter is working as a teacher and getting Rs.5,000/-, therefore, he prayed to dismiss the petition.

4. Upon hearing the argument of both counsel and considering the oral and documentary evidence, the trial Court disbelieved the contention of the husband and awarded maintenance of Rs.2,000/- per month to wife and Rs.1,500/- per month to daughter besides awarding Rs.2,500/- towards legal expenses.

5. Aggrieved by the order, dated 26.07.2011, the present revision is filed by the husband on the ground that the trial Court did not consider the factum of the respondent herein claimed maintenance in F.C.O.P.No.335 of 2008 on the file of the Family Court, Nellore and obtained order for payment of Rs.2,000/- per month towards her maintenance and Rs.1,500/- per month towards maintenance to her daughter. Challenging that order, he filed Criminal Revision Case No.618 of 2009 before the High Court and in CrI.R.C.M.P.No.835 of 2009 this Court granted interim stay of maintenance payable to wife and since then he has been paying Rs.1,500/- per month to the minor daughter regularly. The said fact was not considered by the trial Court. The trial Court also failed to consider the income of the wife from different sources. During hearing, learned counsel for the petitioner while reiterating the contentions held that the amount awarded by the trial Court is excessive and without considering the order passed by this Court in CrI.C.M.P.No.835 of 2009.

6. Heard both sides.

7. There is no dispute with regard to the relationship between the petitioner and respondent and the petitioner before this Court filed a

petition to dissolve the marriage under Section 13(1)(ia) & (ib) of the Hindu Marriage Act by granting decree of divorce and during pendency of the petition, his wife and daughter filed petition under Section 24 of the H.M.Act from grant of interim maintenance and legal expenses. The petitioner before this Court is working as a teacher and earning Rs.30,000/- per month as salary besides possessing several properties and getting more than Rs.1,00,000/- per month from different sources allegedly. Though the respondent denied and contended that the petitioner herein is getting only Rs.7,000/- per month as salary while admitting his employment, but he did not produce a scarp of paper to substantiate his defence that he is receiving Rs.7,000/- only. In the absence of evidence, the Court is bound to accept the income basing on his employment and status. Taking note of the salary of the petitioner, who is working as a teacher, the trial Court took the income of the petitioner herein at Rs.30,000/- per month. In the recent judgment of the Apex Court report in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**¹, relying the earlier judgment of the Apex Court in **Dr.Kulbhushan Kumar v. Raj Kumari and another**², held that the wife and children are entitled to claim maintenance at the rate of 20% over the income of the husband. Therefore, the wife and daughter are entitled to claim 20% of the income of the petitioner herein and respondent before the trial Court, which comes to Rs.6,000/-. Out of

¹ 2017 (5) SCALE55

² (1970) 3 SCC 129

Rs.6,000/-, Rs.1,500/- is being paid to the daughter in pursuance of the order issued by the Family Court. The trial Court awarded Rs.2,000/- to the wife and another Rs.1,500/- to the daughter towards maintenance besides awarding Rs.2,500/- towards legal expenses. Thus, the total awarded by the Family Court and the amount awarded as interim maintenance under Sections 24 of H.M.Act, comes to Rs.5,000/- which is less than 20% of the salary. Therefore, the order passed by the trial Court suffers from any legal infirmity warranting interference exercising the power under Article 227 of the Constitution of India. Therefore, the order is hereby confirmed.

8. As per Section 20 of Hindu Adoption and Maintenance Act, the daughter is entitled maintenance till she got married and it is contended by the learned counsel for the petitioner that she got married, but no proof is filed. However, the order passed by the trial Court is only an interim measure during pendency of the petition and if the daughter got married, the petitioner is not under an obligation to maintain her.

9. With the above observation, the petition is dismissed

10. As a sequel, miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

M. SATYANARAYANA MURTHY, J

13th June 2017

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