

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NOS.1539 AND 3529 OF 2017

C O M M O N O R D E R

O.P.No.426 of 2009 was filed before the Family Court, Ranga Reddy District at L.B.Nagar, by the husband seeking a decree of divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (for brevity, 'the Act of 1955'). O.P.No.427 of 2009, on the other hand, was filed by the wife before the said Court under Section 9 of the Act of 1955 seeking restitution of conjugal rights.

While so, the wife filed I.A.No.2534 of 2009 in O.P.No.426 of 2009 under Section 24 of the Act of 1955 seeking maintenance of Rs.30,000/- per month, of which Rs.15,000/- was for her own maintenance and the balance Rs.15,000/- was for the maintenance of their son. By order dated 04.03.2011, the Family Court allowed this I.A. taking note of the fact that the husband was not paying maintenance in terms of the order dated 01.10.2010 passed by the learned Judicial First Class Magistrate, Special Mobile Court-cum-XI Metropolitan Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy District, in D.V.C.No.1 of 2009, whereby the wife was awarded maintenance @ Rs.11,000/- per month. The Family Court observed that the same was awarded till further orders. Aggrieved by the order dated 04.03.2011 passed by the Family Court, Ranga Reddy District at L.B.Nagar, in I.A.No.2534 of 2009 in O.P.No.426 of 2009, C.R.P.No.3529 of 2017 was filed by the husband.

I.A.No.1166 of 2015 was filed by the wife in O.P.No.426 of 2009 before the Family Court, Ranga Reddy District at L.B.Nagar, seeking a direction to the husband to pay the arrears of maintenance as per the order dated 04.03.2011 in I.A.No.2534 of 2009 filed in the said

O.P. She also prayed for stay of all further proceedings till he did so. By Docket Order dated 27.01.2017, the Family Court, Ranga Reddy District at L.B.Nagar, granted liberty to the wife to take steps for realization of the arrears of maintenance, if any, but held that she could not refuse to adduce evidence on that ground. The case was accordingly adjourned to enable her to proceed further. Aggrieved thereby, she filed C.R.P.No.1539 of 2017.

Heard Sri T.S.Rayulu, learned counsel for the wife, and Sri T.Sudhakar Reddy, learned counsel for the husband.

Sri T.S.Rayulu, learned counsel, would contend that the husband is still in arrears of maintenance and that he is not entitled to proceed with his divorce O.P., without honouring the order of the Court to pay maintenance pending disposal of the O.P. He placed reliance on **NAREDLA JAYASRI V/s. N.RAVI KUMAR**¹ in this regard.

On the other hand, Sri T.Sudhakar Reddy, learned counsel, would contend that the law laid down by this Court in the aforesaid decision would have application only if the husband was in arrears of maintenance and forcefully assert that it is not so in the case on hand. He would further submit that the wife sought transfer of both O.Ps. from the file of the Family Court, Ranga Reddy District at L.B.Nagar, *vide* Transfer C.M.P.Nos.367 and 374 of 2017 and by common order dated 22.06.2017, this Court found no merit in her allegations but withdrew the O.Ps. from the Family Court, Ranga Reddy District at L.B.Nagar, and transferred them to the Family Court, Malkajgiri, so that justice is not only done but would also appear to have been done. Further, this Court fixed the desirable time frame within which the O.Ps. should be disposed of.

¹ 2015 (1) ALD 538

The question before this Court is whether the husband paid maintenance fully in terms of the orders passed by the Courts below.

It is an admitted fact that the order in D.V.C.No.1 of 2009 was earlier in point of time, having been passed on 01.10.2010 by the learned Judicial Magistrate of First Class, Special Mobile Court-cum-XI Metropolitan Magistrate, Cyberabad at L.B.Nagar. By this order, the learned Metropolitan Magistrate directed the husband to pay a sum of Rs.2,000/- per month for the accommodation of the wife and child along with maintenance of Rs.9,000/- per month for both of them. The husband was also directed to return Rs.1,00,000/- towards the marriage expenditure along with Rs.10,000/- towards the medical expenditure incurred by the wife's parents. This order was subjected to appeal by the husband in Criminal Appeal No.156 of 2010 before the learned XI Additional District and Sessions Judge (FTC), Ranga Reddy District. By interim order dated 20.04.2011 passed in the said appeal, the appellate Court directed the husband to pay Rs.2,000/- per month towards alternative accommodation and Rs.6,000/- per month towards monthly maintenance of the wife and child. The sum of Rs.10,000/- directed to be paid towards medical expenditure was also directed to be paid. The sum of Rs.1,00,000/- directed to be paid towards marriage expenditure was however stayed. The husband undertook to pay a consolidated sum of Rs.1,00,000/- towards arrears of maintenance along with the sum of Rs.10,000/- towards medical expenditure on or before 29.04.2011. In effect, the maintenance originally directed to be paid at Rs.11,000/- per month came down to Rs.8,000/- per month. This appeal however came to be dismissed as recently as on 14.03.2017, confirming the order dated 01.10.2010 passed in D.V.C.No.1 of 2009.

This dismissal was however after disposal of I.A.No.1166 of 2015 in O.P.No.426 of 2009 on 27.01.2017.

The material placed before this Court in evidence of the amounts paid by the husband since the passing of the orders in 2010 and 2011 demonstrates that the amounts directed to be paid to the wife as per the appellate Court's order were, in fact, scrupulously paid by the husband. The arrears of maintenance and the medical expenditure, as directed by the appellate Court, were also paid. Therefore, as on the date of filing of the application in I.A.No.1166 of 2015 in O.P.No.426 of 2009, there were no arrears outstanding.

Sri T.S.Rayulu, learned counsel, would however contend that as separate maintenance was awarded in O.P.No.426 of 2009, the husband ought to have paid that amount independently and as he failed to do so, those arrears are still outstanding.

This argument, in the considered opinion of this Court, proceeds on a misconception and a profound misunderstanding of the order dated 04.03.2011 passed by the Family Court, Ranga Reddy District at L.B.Nagar, in I.A.No.2534 of 2009 in O.P.No.426 of 2009. By the date of passing of the said order, the husband had already suffered the order dated 01.10.2010 in D.V.C.No.1 of 2009 requiring him to pay Rs.11,000/- per month towards maintenance and alternative accommodation. The Family Court, Ranga Reddy District at L.B.Nagar, merely took note of the fact that he was not paying the awarded maintenance of Rs.11,000/- per month and awarded the same till further orders. This order therefore did not mean that a further sum of Rs.11,000/- was to be paid in addition to what the husband had to pay in terms of DVC Court's order. No doubt, the Family Court, Ranga Reddy District at L.B.Nagar, had the

discretion to take into account the maintenance already awarded in D.V.C.No.1 of 2009 and independently add to the said maintenance but that was not what was done in the case on hand. The Family Court merely adverted to the maintenance granted in the DVC, which was not being paid, and observed that the same was awarded till further orders. It was therefore a mere affirmation of the maintenance amount already granted in the D.V.C. and no further.

As it is not disputed that the husband paid the amounts awarded in D.V.C.No.1 of 2009, as modified in the appeal pending disposal of the appeal, and was therefore not in arrears of maintenance as on the date of the institution of I.A.No.1166 of 2015 in O.P.No.426 of 2009, the stand of the wife that she is not required to proceed further in the case, in terms of the law laid down by this Court in **NAREDLA JAYASRI¹**, does not hold water. No doubt, as the appeal against the order dated 01.10.2010 in D.V.C.No.1 of 2009 stood dismissed, *vide* order dated 14.03.2017 in CrI.A.No.156 of 2010, the husband would be under the liability of clearing the arrears of maintenance in terms of the original order dated 01.10.2010. However, this is a development that took place post-institution of the present litigation arising out of I.A.No.1166 of 2015 in O.P.No.426 of 2009. In the event the husband fails to clear the said arrears within a reasonable time, it would be open to the wife to take suitable steps before the Family Court in terms of the law laid down by this Court in **NAREDLA JAYASRI¹**. However, as matters stand, this Court finds no reason to interfere with the order dated 27.01.2017 passed in I.A.No.1166 of 2015 in O.P.No.426 of 2009 on the file of the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar. As this Court presently clarified the import and meaning

of the order dated 04.03.2011 passed in I.A.No.2534 of 2009 in O.P.No.426 of 2009 on the file of the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar, the civil revision petition filed by the husband also does not merit consideration.

Both the civil revision petitions are accordingly dismissed. Pending miscellaneous petitions, if any, in both matters shall also stand dismissed. There shall be no order as to costs.

8th SEPTEMBER, 2017

Svv

SANJAY KUMAR, J

