

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
HON'BLE SRI JUSTICE P. KESHA RAO

C.MA.No.4396 of 2004

JUDGMENT: (per Hon'ble Sri Justice P. Keshava Rao)

The present appeal is filed by the appellant aggrieved by the orders, dated 23.07.2003 passed in H.A.M.O.P.No.34 of 2002 on the file of the Court of the Judge, Family Court-cum-V Additional District Judge, Tirupathi.

The facts of the case are that originally the appellant herein filed a petition under Section 18(1) and 2(e) of Hindu Adoption and Maintenance Act before the Judge, Family Court-cum-V Additional District Judge, Tirupathi against the respondent herein. It is her case that her marriage with respondent herein was performed on 02.03.1979 according to the Hindu Customs and Rites prevalent in their community, at Kanakadurga Temple at Vijayawada. The marriage was consummated and the appellant went to Tirupati to join her matrimonial life with the respondent. However, the respondent was addicted to drinks and developed illicit intimacy with one Vijaya @ Bojjamma and out of the said illicit intimacy, the appellant herein was ill-treated by the respondent. Ultimately, the appellant was driven out of her matrimonial house in the year 1989 and since then she is residing with her parents at Tirupati as there is no other alternative accommodation for her. In those circumstances, the appellant filed a petition for maintenance in M.C.No.10 of 1992 against the respondent herein before the V Metropolitan Magistrate, Vijayawada and the same was allowed

by orders dated 23.10.1993. In the said M.C., the appellant was awarded a sum of Rs.275/- towards monthly maintenance and for which the respondent has also agreed. At that point of time, the respondent was working as a watchman. Though the respondent agreed to pay the maintenance, he failed to comply with the orders of the Family Court from February, 1998 onwards. Since the appellant was unable to maintain herself, she caused a legal notice on 22.06.2001 claiming arrears of maintenance from February, 1998 onwards. The said legal notice was not received by the respondent. Whereupon, she got issued a second legal notice on 03.09.2002 and it was refused by the respondent. It is also the case of the appellant that the respondent is living with his concubine at Door No.10-160 at Chandrababu Naidu Colony, Mangalam of Tirupati Urban Mandal and procured three children through her. Therefore, she is entitled for a separate residential accommodation to live away from the respondent. As far as the present status of the respondent is concerned, she has categorically claimed in the petition that at present the respondent is working as Mechanic in Telephone Department at Puttur Exchange drawing a salary of Rs.6,415/-. As such, the appellant filed the instant petition claiming maintenance at Rs.2,000/- per month irrespective of the maintenance granted under Section 125 Cr.P.C. which is a temporary relief and Rs.1,000/- towards separate residential accommodation.

After filing the petition, the appellant herein filed her affidavit in lieu of chief-examination as PW-1. However, the respondent has

not chosen to file any counter affidavit opposing the claim of the appellant herein.

A perusal of the cause title of the orders of the court below would show that the respondent herein was called absent and set ex parte. But, at the same time, the order indicates that the counsel for the respondent was heard. Be that as it may, the fact remains that the court below after considering the contents of the petition as well as the affidavit filed by the appellant, and also taking into consideration the financial position of both parties, granted a sum of Rs.500/- per month as maintenance from the date of filing of the petition which includes the maintenance granted in the M.C. by orders dated 23.07.2003. Not satisfying with the above said orders, the appellant filed the instant appeal before this Court.

Learned counsel for the appellant submitted that the appellant is residing with her parents who are surviving on the amount of pension. The maintenance amount granted earlier was too meager and she is unable to sustain herself. Since the respondent is living with concubine and their children, she is entitled to a separate residential accommodation apart from the maintenance. He also contended that the court below miserably failed to appreciate the contentions raised by the appellant in proper perspective, more so, in the light of the fact that the respondent is living with concubine and children and the appellant was left to her fate.

As per Section 18 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu wife whether married before or after the commencement of the Act, shall be entitled to be maintained by her husband during her life time. At the same time, she is entitled to live separately from her husband without forfeiting her claim to maintenance if the husband has any other wife living or keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere apart from other grounds. Sub-section 3 of Section 18 also contemplates that a Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

In exercising the power under Section 18 of Hindu Adoptions and Maintenance Act, the Court has to see whether the ingredients mentioned therein, more particularly, forcing the Hindu wife to live separately from her husband, has to be considered and at the same time, for grant of maintenance the Court has to see the circumstances under which the parties have resided. Maintenance is always dependant on the factual situation of the case and the Court would be justified in moulding the claim for maintenance on various factors. At the same time, for deciding the maintenance, the considerations such as the income and property of both the parties are the relevant material in addition to the conduct of the parties and other circumstances of the case. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to the reasonable

expenses for his own maintenance and other legal obligations. But, at the same time, the status of the wife before the marriage is also a relevant factor for determining the amount of maintenance apart from the amount of maintenance to be granted and the amount should enable the wife to live in a reasonable comfort as she used to live with her husband and also the status and the comforts in which the husband is leading his life before awarding the maintenance. However, the Court has to also consider the amount fixed should not be excessive to affect the living condition of the other party. In addition to the same, the Court also has to see the present cost of living such as hike in prices of essential commodities, medical care required on account of age related problems and also the cost of separate residence and etc. In the case on hand, the appellant herein was driven out of her matrimonial house in the year 1989 itself and since then she is residing with her parents at Tirupathi as she does not have any other alternative accommodation. The reason for living separately with her parents is the conduct of the respondent in living with a concubine with their children. In those circumstances, it can be safely inferred that it is not safe for the appellant to live with her husband under the same roof where the concubine of her husband with children are living.

Therefore, in the light of the facts stated supra and having regard to the submissions made by the learned counsel for the appellant, this Court is of the opinion that in the light of the present cost of living, and also to meet the day today expenses, the appellant cannot survive with a meager amount of Rs.275/- granted earlier in M.C.No.10 of 1992. Therefore, this Court is of the



opinion that to meet the ends of justice, the maintenance as well as the separate residential accommodation cumulatively be estimated at Rs.2,000/- per month.

Accordingly, the appeal is allowed in part.

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

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JUSTICE C. PRAVEEN KUMAR

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JUSTICE P. KESHAVA RAO

Date: 09.10.2017.  
ccm/vhb



HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
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