HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.1887 of 2016

ORDER:

This revision is preferred by the MC respondent impugning the dismissal order dt.15.03.2016 in I.A.No.375 of 2015 in I.A.No.107 of 2015 in M.C.No.11 of 2015 of the Judge, Family Court Nellore, filed u/sec.127 r/w Sec.125 of the Criminal Procedure Code(for short, 'CrPC') to alter the *ex parte* interim maintenance order passed in I.A.No.107 of 2015 dated 18.02.2015, with the contentions in the grounds of the revision vis-à-vis oral submissions of the learned counsel for the petitioner that the impugned dismissal order, dt.15.03.2016 of the trial Court is contrary to law and weight of evidence, the revision petitioner filed divorce petition against the 1st respondent-wife which was allowed but 1st respondent-wife filed application for setting aside said decree which is pending. The revision petitioner against the *ex parte* interim maintenance preferred Crl.R.C.No.741 of 2015 before this High Court which pleased to dispose of the case by order, dt.23.06.2015 directing the trial Court to dispose of I.A.No.375 of 2015 as expeditiously as possible, preferably within 3 months. The learned trial Judge heard the matter afresh and passed an erroneous order dt. 15.03.2016 holding that the order dt.18.02.2015 passed in I.A.No.107 of 2015 holds good and it does not require any alteration without looking into the facts and circumstances of the present living conditions in Hyderabad of the revision petitioner with the USA which cannot be compared, and mere purchasing of luxurious goods like cars, Televisions, gadgets etc., does not mean that the circumstances will be the same for life in USA and establish petitioner is having sufficient means. As bringing the luxurious goods to India is very expensive due to heavy customs duty, he had kept these goods at his friends' house at USA and later gifted to them. The learned trial Judge granted interim maintenance of Rs.15,000/- and Rs.10,000/- to the respondents respectively based on the evidence produced by the respondents totally neglecting his evidence with regard to his income and also not looked into the fact that the petitioner had joined the company in 2010 and is earning only Rs.15,000/- only from October 2013 and the same is not denied by the respondents. Further under Ex.R.4 sale deed, dt.04.07.2005 house was purchased out of loan obtained from the bank at the EMI of Rs.49,545/- which is paid against the rental income of Rs.28,000/- and the balance is being paid by his father from his pension income and the same is shown under Exs.P.19 statement and P.11 rental agreement but the same is overlooked by the trial Judge. The learned trial Judge failed to notice that the 1st respondent having sufficient income to maintain herself and son as she had not withdrawn the amount deposited by him for 7 months at the rate of Rs.5,000/- in her account. The mutual fund amount of Rs.1,00,000/- deposited by the petitioner for the welfare of respondent No.2 had been withdrawn by her during the trial of the case. Her version as per Ex.R.1 downloaded copy dt.05.02.2015 of Gloquqal Information Technologies Private Limited, Hyderabad(for short, 'the Company), showing he was a Director in said Company since the date of establishment i.e. on 15.12.2007 is wrong as Ex.R.3 downloaded copy clearly proves that he was appointed as Director in the Company from 30.01.2010 only. The petitioner had clearly stated that he does not or did not own any shares in the Company, that the petitioner also produced a valid document issued by the accredited Chartered Accountant stating that he was given a salary of Rs.15,000/- from the Company since Octobe,2013. The trial Judge did not consider his willingness to pay maintenance to the respondents if the same is decided based on his income shown by him working in different places. Whether the petitioner was shown as Director and as non-Executive Director as contended by him, the financial position of the company with regard to his salary of Rs.15,000/-p.m. from October,2013 and not having share holding in the company does not change.

2. The brief facts of the petition in I.A.No.375 of 2015, the order which impugned herein, are the respondents, none other than his wife and son have filed M.C.No.11 of 2015 and also filed I.A.No.107 of 2015 for interim maintenance in which the trial Judge granted maintenance without affording any opportunity to him. The 1st respondent is B.Tech Computer Science Engineering Graduate and certified as Accredit Integration Specialist from HP USA and working as teacher in private School and earning sufficient income to maintain herself and minor son. He also deposited some amount in the account of 1st respondent and she failed to utilize the same as she is having sufficient means. He also deposited one lakh in mutual fund for the welfare of minor son. Her parents are employees and they have no male issues and her sister is well settled. Her parents are having a house and vacant site at Nellore and Bangalore and agricultural land in Prakasam district. She is living with her parents and there are no financial constrains to her. Since 2009, his wife is residing separately from him and kept quiet all these days and since she could not succeed in criminal cases filed against him and his family members, she made a false representation before the court that he is having studied in Indian Institute of Technology, Karagpur and Indian Institute of Management, Lucknow and got good job at USA, where he harassed her mentally. She is suffering from mental imbalance and he took her to a doctor at USA for treatment. He, unable to bore her threats that she will lodge a false complaint against him in

USA, resigned his job and came down to India. He joined as Director in the Company on remuneration of Rs.15,000/- p.m. the other company referred by the 1st respondent is a non starter and not generating any income. On seeing his financial crisis, his father is paying house loan from his pension. She filed criminal case against him and his family members under sections 498-A and 494 IPC and DVC Act. He approached the High Court to quash the same and the High Court stayed the cases until further orders. As criminal cases are pending against him, his passport was not with him for long time so that he could not secure suitable job outside India. As she deserted him on 23.09.2009, he filed divorce petition and custody petition and the same was allowed on 06.11.2010. After taking divorce, he married another woman in the month of February, 2014 and he is the only son to see the welfare of his aged parents. As remuneration received by him is not sufficient to maintain his family, prayed to alter interim maintenance granted.

3.On the other hand, she filed counter admitting filing of Maintenance Case supra and granting of interim maintenance and denied rest of the allegations and contended that the petitioner and his family members necked her out from the house at Hyderabad. The *ex parte* decree of divorce obtained by him is by forging her signature and she filed an application to set aside the *ex parte* decree and same was re-opened and she is contesting the divorce OP which is pending consideration. He retained all her educational certificates with evil intention to spoil her career due to which she is idle since 2009 till date. He is one of the Directors to the Company and other Directors are his family members. He obtained certificate for his convenient sake and brought into existence for the purpose of the case. He contended in the application filed before the High Court that he is an unemployee but now he contended that he is working as Director of Company. Petitioner has filed application before the High Corut in Crl.R.C.No.741 of 2015 to set aside the *ex parte* interim maintenance order dated 18.02.2015 made in I.A.No.107 of 2015 in M.C.No.11 of 2015 on the file of this Court and also filed separate application in Crl.R.C.No.1236 of 2015 for suspension of operation of *ex parte* maintenance order during its pendency. The High Court directed the petitioner to pay entire arrears of maintenance to her calculating at the rate of 50% within a period of four weeks from 10.06.2015 and continue to pay at the same rate on or before the 10th of every succeeding month until further orders. In view of that the petition filed by the petitioner is infructuous and is not maintainable and is liable to be dismissed.

4. During the enquiry, the petitioner is examined as P.W.1 and got marked Ex.P.1 certificate dated 08.04.2014, Ex.P.2 certificate issued by State Bank of India dated 01.03.2015, Ex.P.3 statement of account of the 1st respondent from 31.12.2009 to 01.04.2012, Ex.P.4 statement of account of the petitioner from 06.11.2014 to 05.05.2015, Ex.P.9 loan agreement of HDFC bank dated 27.09.2005, loan sanction letter dated 14.09.2005, Ex.P.10 loan approval letter dated 05.09.2009, Ex.P.11 rental agreement dated 01.05.2013. Ex.P.12 tax returns dated 28.02.2007, Ex.P.13 statement of account from 01.04.2006 to 04.04.2007, Ex.P.14 Audi Car purchase bill dated 01.04.2009, Ex.P.15 cash payment of Hyundai Elentra Car for the year 2009, Ex.P.16 G.mail copy for purchase of Panasonic Plasma TV Dated 28.11.2008, Ex.P.17 health care statement dated 01.09.2008, Ex.P.18 school fee payments relating to Rajesh, Ex.P.19 statement dated 08.08.2015, Ex.P.20 international travel bills. Ex.P.21 domestic travel bills, Ex.P.22 statement of account of petitioner, Ex.P.23 credit card statements,

Ex.P.24 loan purchase bills and examined P.W.2 Ch.Lakshmi Narasimha Rao and marked Ex.P.5 certified copy of sale deed dated 14.06.2008, Ex.P.6 joint loan account belongs to P.W.2 and his wife. Ex.P.7 loan account belongs to P.W.2 and his wife. Ex.P.8 vouchers 11 in number.

5. The respondents did not adduce any evidence but marked Exs.R.1 to R.3 downloaded copies of company, Ex.R.4 sale deed,dt.4.07.2005 and Ex.R.5 photos (marked in the cross-examination of P.W.1) and Ex.R.5 photos. On hearing both sides and basing on the above oral and documentary evidence, the trial court dismissed the petition holding that the petitioner failed to establish his case that he has no sufficient means and proved as leading life luxuriously and approached the Court with unclean hands.

6. Whereas, it is the submission of the learned counsel for the respondents 1 and 2 and the learned Public Prosecutor for the 3rd respondent that the impugned order of the lower Court no way requires interference while sitting in revision and thereby sought for dismissal of the revision.

7. Heard and perused the material on record.

8. Coming to the quantum of maintenance, from the material but even from his say he is a Director of one company and so far as his remuneration claim of only Rs.15,000/-p.m. concerned, there is no proof from the records of the company and it is even difficult to ascertain anything from his statements of account Exs.P.3 and P.4 and Ex.P.13. Further he himself admitted that there is another company in which he holds a position as active Director or otherwise but saying that company is not generating any income for that even he did not produce any material. He himself claims the rent he is getting from his house is

Rs.28,000/- p.m. with which he is discharging bank loan obtained for the house and balance from the pension income of his father. Even taken therefrom of there is nothing surplus income from the house when he got sufficient other means referred supra and that is supporting from Exs.R.1 and R.3 of the company showing he is Director therein. The Chartered Accountant's so called certificate or document cannot suffice to say what he claims getting Rs.15,000/- p.m. So far as the means of his wife of what he claims as she was working earlier in a private school, he did not produce any record. Her parents properties are not her properties in the absence of showing those are coparcenary and she got right by birth as one of two issues to her parents. He himself claims that she is suffering from mental imbalance and he provided her treatment in USA, it is thereby if at all true, difficult to believe her earnings much less by doing any job and if not even there is no proof of she is earning, however from the above even showing wife also got qualification and can otherwise, what was awarded of Rs.15,000/- and Rs.10,000/- respectively is in high side to reduce the same to Rs.7,000/-to wife and Rs.8,000/- to the child.

9. Once the relationship is not in dispute and it is not even his case of he sent any amount to the wife and child, what he claim of Rs.1,00,000/- so called deposit in mutual fund spent by her is even for her necessity when unable to maintain themselves, suffice to say there is nothing provided by him for their maintenance from his negligence. Thus they are entitled for maintenance.

10. Even from the decision of the Apex Court in Smt. Jasbir Kaur Sehgal vs The District Judge Dehradun[1], the Court has to consider the status of the parties and their respective needs and the means and the

[1] 1997 (7) SCC 7

capacity of the husband/father to pay apart from concession to his reasonable expenses so that the wife and child also shall reasonably and comfortably by considering his status to live though the amount to be fixed neither be excessive nor exorbitant.

11. In the result, the revision is partly allowed by reducing the maintenance amount granted by the lower Court in I.A.No.107 of 2015 in M.C.No.11 of 2015 from Rs.15,000/- to Rs.7,000/- to the revision 1st respondent-wife, and Rs.10,000/- to Rs.8,000/- to the revision 2nd respondent-her son, by setting aside the order in I.A.No.375 of 2015(alteration petition) dated 15.03.2016.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:18.04.2017.