

HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3996 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/ husband is directed against the orders, dated 14.05.2017, of the learned Judge, Family Court, Hyderabad, passed in I.A.No.129 of 2017 in I.A.No.349 of 2016 in O.P.No.1578 of 2013.

2. I have heard the submissions of *Sri Manik Lal Yadav*, learned counsel appearing for the petitioner, and of *Sri G.Karan Singh*, learned counsel appearing for the respondent. I have perused the material record. The parties in this revision shall hereinafter be referred to as the petitioner/ husband and respondent/ wife as arrayed in I.A.No.129 of 2017, for convenience and clarity.

3. The facts, which lie in a narrow compass, in brief, are as follows:

The petitioner herein filed the aforesaid FCOP under Section 12 of the Hindu Marriage Act, 1955 for annulment of marriage. The respondent/ wife is resisting the said petition. In the pending OP, the wife filed I.A.No.349 of 2016 requesting to award interim/ *pendente lite* maintenance @ Rs.30,000/- per month to her pending final disposal of the main OP. The petitioner/ husband is resisting the said application. During the pendency of the aforesaid interlocutory application, the petitioner/ husband filed the subject interlocutory application to direct the respondent/ wife to produce the following documents:

1. Bank Account pass book/ statement of the respondent from the year 2010 to till this date.

2. Income Tax Returns together with T.D.S certificates of the respondent from the year 2010 till this date.
3. Statement of salary particulars of the respondent from the year 2010 onwards to till this date.
4. PAN CARD of Respondent.
5. Loan documents alleged to have been obtained by the respondent.
6. Loan account statement of the respondent from the date of avilment of loan to till this date."

One of his contentions is that the wife is employed and is earning salary and that she is also an income tax assessee and is financially sound. The wife filed a counter resisting the said petition stating that her application for granting interim/pendente lite maintenance was filed in March 2016 and that the husband had already filed a counter, on 06.04.2016, and that the husband is a substantial person and that on account of the harassment meted out, she went into depression and was warned by her employer that she would be removed from service, if she fails to give 100% performance and that under compelling circumstances, particularly, the depression suffered by her on account of the cruelty meted out to her by her husband, she resigned her job and that a criminal case is also registered and a calendar case was taken on file against the husband for the offences punishable under the provisions of the Penal Code and that the petition is filed by the husband only to drag on the matter on one pretext or the other. Her further case is that when the husband is bound to prove his case or defence that the wife is not entitled to award of interim maintenance allowance and when the onus of proof lies upon him, he cannot ask the respondent/wife to produce the documents and that the present petition is filed by suppression of material facts and that the petition earlier filed by the husband was dismissed. Be that as it may. By the orders impugned in

this revision, the learned Judge of the Family Court dismissed the petition of the husband stating that he has to prove his contentions by cogent and convincing evidence and that he cannot depend upon the weakness of the wife's defence or failure on her part to produce her documents and that insisting upon the respondent/wife to produce evidence against her own case would amount to self-incrimination and it offends Article 20(3) of the Constitution of India; and, therefore, the wife cannot be asked to produce the documents as desired by the husband in his application.

4. Aggrieved thereof, the husband filed this revision.

5. Now that the chronology of events and contentions of the parties are already stated supra, it is necessary to further state one more aspect, namely, that there is a DV Case in 42 of 2014 pending on the file of the III Metropolitan Magistrate, Hyderabad, and that in D.V. Appeal No. 1048 of 2016, the learned VII Additional Metropolitan Sessions Judge, Hyderabad, passed an order, dated 17.02.2017, directing the wife/respondent herein to produce the following documents, viz., bank account pass book, income tax returns, salary particulars, PAN Card, documents relating to loan amount etcetera, for consideration in the petition claiming maintenance filed in the said DV case also. Thus, there is an order passed by a competent Court directing the respondent/wife to produce the afore-stated documents. The said order has become final is not disputed. It is fairly stated before this Court that the wife has not yet produced the said documents in the afore-stated DV case proceedings. In case, the wife produces the said documents in the afore-stated DV case, there is no need to again direct her to produce the very same documents for the self same purpose in the present case. The husband can as well obtain the certified copies of the documents that

may be filed by the wife and file them in the present case; or, in the alternative, in the event the documents are produced in the DV Case, he can file an application to send for the said documents from the file of the Court, where the DV case is pending, to the file of the Court, where the instant case is pending, for consideration in the present case by the learned Judge of the Family Court. Therefore, the present request of the petitioner need not be considered by passing a second order for the same purpose.

6. Coming to the aspect of onus of proof, it is no doubt true that there is no reason to deny award of interim maintenance to the wife unless it is sufficiently established that the income of the wife, if any, is sufficient for the sustenance of the wife. Further, 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. In a given case, if the wife is a house wife, the question of production of documents related to her employment and income by her does not arise at all. In a case where the wife pleads that she is a house wife; but, the husband contends that wife is a working woman and yet he fails to produce even a semblance of evidence to show that the wife is employed and is earning income, in such a case also, the wife cannot be faulted for not producing any documents with regard to her alleged employment & income and in such a case also the question of drawing an inference against her does not arise at all. However, either in a case where the wife had admittedly worked for some time or in a case where she is continuing to work, the details of employment and salary will be within her exclusive knowledge. If she is also an income tax assessee, the details of her income and expenditure returned by filing tax returns every year will be within her exclusive knowledge. When any fact is

especially within the knowledge of any person, the burden of proving that fact is upon such person, as per Section 106 of the Indian Evidence Act, 1872. Therefore, in the later cases, if the wife fails to produce necessary documents when called for by the opposite party or the Court, then an inference/presumption against her is permissible under facts and law. In this context, it is profitable to quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Rani Chander Prakash*: [AIR 1968 Delhi 174], which is re-produced in the decision of the Supreme Court in *Shamima Farooqui vs. Shahid Khan*¹, wherein it has been opined thus:

An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

Applying the same analogy, it can be said that if the wife fails to disclose to the Court her past or present financial and employment status by producing the required documents in obedience to the orders of the Court, a presumption against her will be permissible.

7. In the case on hand, there is already an order of a competent Court passed in a judicial proceeding requiring the wife to produce certain documents, the details of which are already stated supra. If the wife produces the documents in obedience to the order of the Court,

¹ 2015 (2) ALD (GrI.) 549 (SC)

there cannot be any grievance for the husband. However, if the wife fails to produce the documents, it is for the trial Court to take an appropriate view of the matter and draw the necessary inference/ presumption as envisaged under law, if the facts of the case warrant drawing any inference.

8. On the above analysis and for the reasons stated supra, the husband's revision needs to be dismissed.

9. Resultantly, the Civil Revision Petition is dismissed.

Pending miscellaneous petitions, if any, in this revision petition shall stand closed.

12th September, 2017
RAR

M. SEETHARAMA MURTI, J

