

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2455 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful respondent/ husband is filed challenging the order, dated 31.03.2016, of the learned Judge, Additional Family Court, Hyderabad, passed in I.A.No.34 of 2015 in O.P.no.1515 of 2014.

2. I have heard the submissions of *Sri M.Adam*, learned counsel for the petitioner/ wife, and of *Sri M.Krishna Reddy*, learned counsel for the respondent/ husband. I have perused the material record.

2.1 For convenience and clarity, the parties in this revision shall hereinafter be referred to as the petitioner/ wife and respondent/ husband, as arrayed in the application filed by the wife seeking interim maintenance.

3. The facts in a nutshell are as follows:

The respondent (revision petitioner)/ husband filed FCOP No.1515 of 2014 on the file of the Judge, Additional Family Court, Hyderabad, under Section 13(1)(ia) of the Hindu Marriage Act, 1955, for granting a decree of divorce by dissolving the marriage, dated 13.08.2006, between the parties. In the said OP, the petitioner/ wife filed the aforesaid interlocutory application under Section 24 of the Hindu Marriage Act, 1955, requesting to grant *pendente lite* maintenance allowance @ Rs.20,000/- per month besides Rs.50,000/- towards legal expenses. The said petition was resisted by the respondent/ husband. On merits and by the orders impugned in the revision, the learned Judge, Additional Family Court, partly allowed the petition of the petitioner/ wife and

granted interim maintenance @ Rs.10,000/- per month from the date of the petition till disposal of the main OP and Rs.15,000/- towards expenses of the proceedings.

4. Aggrieved thereof, the respondent/ husband is before this Court.

5. I have carefully perused the pleadings in the main OP as well as the pleadings in the interlocutory application, which are filed before the Family Court.

6. Whatever may be the reasons, there were disputes between the spouses and those disputes had lead to estrangement is admitted. The petitioner and the respondent are living separately is also not in dispute. The wife is having custody of two children and is taking care of them is also admitted. In the considered view of this Court, 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. 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. So far as the children who are minors, the respondent/ father is obliged under facts and in law to pay reasonable amount of monthly interim maintenance to them. The interim maintenance awarded shall be adequate for sustenance, and sufficient for meeting expenses towards food, clothing and shelter, besides essential incidental expenses. In case of children, it takes in its compass the educational expenses also of the children. The law is well settled that the interim maintenance has to be awarded keeping in view the social status and economic & living conditions of the family; and, the interim maintenance awarded to the wife and children must be sufficient to enable them to live in reasonable comfort and with dignity.

The provision for interim maintenance was enacted with the avowed object of preventing vagrancy and destitution. The proceeding for interim maintenance is not intended for a full and final determination of the personal rights and matrimonial disputes between the spouses and the order of interim maintenance is subject to final determination of their rights. The provision provides for speedy remedy for providing interim maintenance to the wife and eligible children.

7. Now, it is necessary to revert back to the facts of the case and deal with the contentions of the parties.

8. Shorn off unnecessary details, the case of the petitioner/ wife in support of the aforesaid request, in brief, is as follows: 'After disputes and estrangement between the spouses, the petitioner/ wife has come back to her parents' place and is staying with her children in a locality, which is nearer to the place of her parents by receiving assistance from her parents. She has no income or source of income. She is a house wife. Her husband is working in a private organization and earning a monthly salary of Rs.30,000/- and getting a rental income of Rs.70,000/- per month. He is not providing any maintenance to her and her children. She is having school going children under her care and custody. Hence, she is constrained to file the petition seeking interim maintenance.

9. The case of the respondent/ husband, in brief, is as follows:

The respondent/ husband tried to persuade the petitioner/ wife to come back to matrimonial home and discharge her matrimonial obligations. She stated that she has no intention to return to the matrimonial home. Her acts amount to cruelty. OP for dissolution of marriage and for granting a decree of divorce was filed on the ground of

cruelty. All the efforts of the respondent/husband to make the petitioner/ wife join him proved in vain. The respondent is not earning any salary as being claimed by the petitioner. He is presently getting a rental income of Rs.15,000/- per month from his parents' property. He is living on that income. He has to look after his ailing mother aged 78 years and he has to provide basic necessities and meet the medical expenses from the rental income. He is not employed anywhere. The petitioner/ wife is stitching clothes. She is a trained classical dancer. She is teaching dance by taking dance classes and is earning approximately Rs.25,000/- per month. She is capable of earning and looking after her two children. As such, she is not entitled to any maintenance whatsoever. The petition may be dismissed.

10. Be that as it may. 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] 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.”

In the cited case, it was further held that when the husband does not disclose to the Court the exact amount of his income, the presumption would be easily permissible against him.

11. Having regard to the facts, submissions and the legal position obtaining and that keeping in view the present day cost of living, interim maintenance allowance @ Rs.10,000/- per month, awarded to the wife having custody of two minor children is a reasonable amount by any standards. Therefore, this Court finds that there is no merit in the revision of the revision petitioner/ husband and the revision petition is devoid of merit and is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed with costs. The revision petitioner/ husband is directed to pay the entire arrears of maintenance up to date within two months from the date of receipt of a copy of this order, however, in two equal monthly instalments.

Pending miscellaneous petitions, if any, shall stand closed.

06th October, 2017
RAR

M. SEETHARAMA MURTI, J

