

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4419 OF 2016

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 23.02.2016 passed by the Family Court, Ranga Reddy at L.B.Nagar, in I.A.No.152 of 2016 in O.P.No.163 of 2011. The said O.P. was filed by the petitioner-husband seeking dissolution of his marriage with the respondent-wife by a decree of divorce. While so, he filed the subject I.A. therein under Order 7 Rule 14(3) CPC to receive certain documents. By the order under revision, the Family Court dismissed the I.A. with costs. Aggrieved thereby, he is before this Court.

By order dated 09.09.2016, this Court granted interim stay of further proceedings in the O.P., being of the opinion that the order under revision required examination.

Heard Sri B.P.Raju, learned counsel for the petitioner-husband, and Sri Tarlada Rajasekhar Rao, learned counsel for the respondent-wife.

At the very outset, Sri Tarlada Rajasekhar Rao, leaned counsel, brought it to the notice of this Court that the petitioner-husband was, on the one hand, pursuing the litigation initiated by him for a divorce but, on the other hand, he was not abiding by the orders passed therein which were adverse to him. The learned counsel pointed out that his client, the respondent-wife, had filed I.A.No.2833 of 2011 in O.P.No.163 of 2011 under Section 24 read with Section 26 of the Hindu Marriage Act, 1955, seeking payment of school fees of the children and also maintenance. Thereupon, the Family Court awarded interim maintenance of Rs.1,500/- per month to each of the

three children of the parties. Aggrieved by the quantum of the maintenance granted, the respondent-wife and the children filed C.R.P.No.3746 of 2013 before this Court. By order dated 03.07.2014, a learned Judge of this Court allowed the CRP in part and awarded interim maintenance to each of the children @ Rs.3,000/- per month from the date of the petition. Two months time was granted to the petitioner-husband to pay the arrears of the maintenance. This order was confirmed in review *vide* the dismissal order passed in Review CRP MP No.4790 of 2014 in CRP No.3746 of 2013.

Taking note of these aspects and given the fact that the maintenance to be paid by the petitioner-husband was towards the upkeep of his own children, this Court adjourned the matter from time to time to enable him to prove his *bonafides* by complying with the aforestated maintenance orders. Despite the same, the arrears of maintenance due to the children in terms of the aforestated orders were not paid.

The pay-slip of the petitioner-husband for December, 2011, was produced by Sri B.P.Raju, learned counsel, to support the plea that the net take-home pay of the petitioner-husband was only Rs.7,276/-. Perusal of this-pay slip shows that the gross pay of the petitioner-husband was Rs.35,139.65 at that point of time but the deductions therefrom reduced it to a net pay of Rs.7,276/-. These deductions were, apart from others, towards furniture recovery, two-wheeler loan, car loan, festival advance, DM and D loan, computer loan, group insurance premium and a personal loan. There is no explanation forthcoming as to why the petitioner-husband did not produce a pay-slip of more recent vintage. It is however admitted by Sri B.P.Raju, learned counsel, that the

petitioner-husband is yet to clear the arrears of maintenance due to the children in terms of the orders passed by this Court.

On 09.12.2016, this Court took note of the submission made by Sri Tarlada Rajasekhar Rao, learned counsel, that the arrears due in this regard were in excess of Rs.3,00,000/- and directed the petitioner-husband to deposit a sum of Rs.1,50,000/- by 16.12.2016, failing which the civil revision petition would be dismissed peremptorily. Despite this order, the petitioner-husband failed to make the deposit. It is therefore clear that the petitioner-husband did not choose to abide by the orders passed by this Court in relation to the maintenance payable by him for the upkeep of his three children.

This being the admitted position, the question that arises for consideration is whether the petitioner-husband can be permitted to use the judicial process to suit his own interest while ignoring the orders passed against him.

In **ATREYAPURAPU VENKATA SUBBA RAO V/s. ATREYAPURAPU VENKATASHYAMALA**¹, this Court held that in a petition filed by the wife for maintenance, when the husband failed to abide by the interim order granted therein, his defence deserved to be struck off by taking recourse to the inherent powers available to the Court under Section 151 CPC.

In **MANGALAM V/s. P.S.KRISHNA PILLAI**², a learned Judge of the Kerala High Court held that the Court would have inherent jurisdiction under Section 151 CPC to give effect to its order and prevent abuse of process by striking off the defence of the husband in the wife's petition for divorce, when he failed to abide by the interim order of maintenance passed therein.

¹ II (1990) DMC 486

² II (1992) DMC 545

In **SMT.SANTOSH SEHGAL V/s. MURARI LAL SEHGAL**³, a Division Bench of the Delhi High Court took note of the failure of the husband to pay maintenance and litigation expenses to the wife in terms of the Court order and struck off his defence.

In **NAREDLA JAYASRI V/s. DR.N.RAVI KUMAR**⁴, this Court had occasion to deal with an identical situation where the husband sought a decree of divorce from the Family Court, but having suffered an order for payment of maintenance therein, he chose to ignore the same. Referring to the law laid down by other High Courts in this regard, this Court observed as under:

‘Given the established facts, it is clear that the respondent-husband, having suffered an order for payment of interim maintenance at the hands of the Family Court, which was partly modified by this Court, chose to disobey the same. It is not his case that he has approached the Supreme Court assailing the orders passed by this Court in C.R.P.Nos.3177 and 4061 of 2013. Therefore, his careless disregard and disrespect towards such orders would necessarily have to be taken into consideration when he seeks to prosecute his divorce OP pending before the very same Court. Having invoked the jurisdiction of the said Court to seek relief by way of a divorce decree, the respondent-husband cannot blithely say that he will ignore the other order passed by the said Court, because it is adverse to him. Permitting such party to prosecute his case while merrily disobeying the order passed against him would invariably amount to an abuse of process. This, in essence, was the import of the judgments of the Bombay and Gujarat High Court referred to *supra*. This Court is in respectful agreement with the views expressed therein....’

In the light of this settled legal position, it is not open to the petitioner-husband to utilize the process of the Court to suit his

³ AIR 2007 DELHI 210

⁴ 2015 (3) ALT 65

convenience while abusing the judicial process by failing to comply with the orders passed against him in the very same proceedings. The Family Court, Ranga Reddy at L.B.Nagar, shall take steps accordingly.

The civil revision petition is therefore dismissed on this short ground. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

17th FEBRUARY, 2017

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