

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.2492 OF 2017

ORDER

This Civil Revision Petition is directed against the order dated 15.5.2017 in I.A.No.73 of 2017 in O.P.No.23 of 2011 passed by the Family Judge-cum-VIII-Additional District Judge, Ongole.

The petitioner herein is the respondent in the said O.P. The respondent herein, who is the husband, filed the said O.P for divorce under Section 13 (1) (ia) read with Section 7 explanation (c) of the Hindu Marriage Act, 1955 (for short 'the Act'). The respondent-husband also filed G.O.P No.24 of 2011 seeking custody of the minor child viz., baby Yashita. The petitioner-wife filed O.P.No.22 of 2011 for restitution of conjugal rights. All the three petitions were clubbed together and joint trial is being conducted. The evidence on behalf of the respondent-husband was completed by examining PWs.1 to 3 and the evidence on behalf of petitioner-wife has to be commenced. At that stage, the petitioner filed C.R.P.No.884 of 2015 challenging the action of the trial Court in continuing the proceedings in O.P.No.23 of 2011 contrary to the joint memo dated 10.06.2012 filed by the

parties in G.O.P.No.24 of 2011. In the said joint memo, the parties agreed to admit the child in a school in Ooty and agreed for separate visitation rights. It appears that in the said memo, the parties agreed to keep all other cases in the trial Court pending. When the trial Court insisted for trial in divorce OP No.23 of 2011, the above CRP was filed. This Court dismissed the revision filed by the petitioner-wife with the following observations:

“Admittedly, the OPs in question had been filed in the year 2010. The joint memo was filed for the limited purpose to provide better education to the minor child in a school in Ooty. Neither party has accepted the stand of the other party with regard to the continuation or dissolution of the marriage. 5 years have elapsed since filing of the OP and 3 years have elapsed since filing the joint memo. Since both parties have not arrived at an amicable settlement on the continuation of their inter se relationship, the Court below is left with no option but to proceed with the OPs in accordance with law.

It is also brought to my notice that after filing of this revision, I.A.No.701 of 2015 has been filed by petitioner to club O.P.No.23 of 2011 filed by respondent seeking divorce, O.P.No.22 of 2011 filed by himself for restitution of conjugal rights and G.W.O.P.No.24 of 2011 filed by petitioner seeking custody of the minor child. Now all the 3 OPs are

clubbed and the Court below is proceeding to decide the same in accordance with law. So both parties are directed to co-operate with the disposal of the said cases.

For all the above reasons, the Civil Revision Petition is dismissed. No costs.”

It appears that against the said order, the petitioner preferred Special Leave Petition on 18.07.2016 and the Apex Court refused to interfere with the said order. After dismissal of the said SLP, the above I.A was filed seeking a direction to the respondent-husband to submit an affidavit with regard to his assets, income and expenditure with liabilities, in the enclosed format. The said application was filed mainly based on a decision of the Delhi High Court in *Kusum Sharma v. Mahinder Kumar Sharma*¹. The said decision arose out of the proceedings under Section 25 of the Act.

A counter-affidavit was filed by the respondent-husband stating that there is no provision under any statute or any judgment for allowing such an application and the decision of the Delhi High Court is not binding on this Court. It is further stated that if any information is necessary under Sections 25 to 27

¹ AIR 2015 Delhi 53

of the Act, it may be asked at an appropriate stage, and filing such an application in the divorce case is *ex facie* not maintainable and the application was filed only to delay the trial and to drag on the matter on one pretext or the other.

The trial Court, after considering the over all facts, dismissed the said application *vide* its order dated 15.5.2017 with the following observations:

“In view of the facts and circumstances of the case when the respondent side evidence is closed and the petitioner has to begin her side, at this stage the present IA was filed just to drag on the matter cannot be ruled out.

By considering all the relevant facts and circumstances of the case and by considering submissions made by both the counsel this Court is of the view, evidently neither the Courts are insisting for any affidavits of the parties in this type of cases nor such practice is in vogue, the attempt on the part of the petitioner seeking the relief to other the respondent to produce the affidavit in format is nothing but to protract the litigation at this stage after the evidence of the respondent (petitioner in main OP) side was closed and the matter is posted for the evidence of the petitioner (respondent in main OP), it appears when this application has been filed only to

protract the proceedings, directing the respondent to file the affidavit may result in injustice and hence this petition is liable to be dismissed.

The point is answered accordingly.

In the result, the petition is dismissed as there are no merits, but without costs.”

Learned counsel appearing for the petitioner fairly submits that the present application is filed mainly based on the judgment of the Delhi High Court and he advanced elaborate arguments. He brought to the notice of this Court Section 24 of the Act, which is in the following terms:

“Maintenance is not merely a legal right. It is part and parcel of basic human right. For weaker sections, it is a problem in the sense that their very survival rest on the maintenance. The object behind the provision is two-fold: firstly, to prevent vagrancy resulting from stained relation between the husband and wife, and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. On the breakdown of the marriage, it often so happens that the husband pays nothing for the support of his wife and children and the wife has to fall back upon her parents and relatives to fend her immediate needs. Reasonableness too demands extension of such a relief in favour of a needy spouse. Had not the parties drifted away from one another, the spouse from whom support is sought would have in any case supported the other spouse entailing financial burden. Hence, it is but natural to make the husband bear the cost

of maintaining his wife pending disposal of any dispute until some permanent relief is provided to her.

Burden of proving the income.

The true income of the parties is within their personal knowledge and therefore, the onus to prove their true income is on them under Section 106 of the Indian Evidence Act.”

The said provision enables the aggrieved party to move the Court by way of an appropriate application at an appropriate stage seeking information in order to avail the remedy of Section 25 of the Act.

As rightly pointed out by the trial Court, the present application, which is filed in O.P.No.23 of 2011, is unnecessary. It is pertinent to notice that the respondent in his counter also agreed for right of the petitioner to seek such information at an appropriate occasion. It is admitted that no application under section 25 of the Act is pending before the trial Court and the petitioner did not aver that she intends to file such an application.

In the circumstances, learned counsel for the petitioner agrees for closure of the present revision petition with liberty to file an appropriate application at an appropriate stage seeking information as sought for.

In view of the same, the Civil Revision Petition is closed without deciding the rights of the parties and the maintainability of the application. In view of the earlier order of this Court, as extracted above, the trial Court shall complete the trial of the case as expeditiously as possible. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

29th June, 2017

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JUSTICE A.RAMALINGESWARA RAO