

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.6941 of 2017

ORDER :

The revision petitioner is the husband of the revision 1st respondent and father of the revision 2nd respondent, who is aged two years by the time of filing the petition in the year 2015. It is for interim maintenance pending the main suit for maintenance under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the Act'). The relationship between the parties is not in dispute, but for allegations and counter allegations against them. It is not germane for purpose of the interim maintenance application, more particularly from the settled Full Bench expression of this Court in **P. Srinivasa Rao v. P.Indira and another**¹, that even though there is no specific provision in a suit for maintenance, interim maintenance application is maintainable under Section 151 C.P.C. read with 3 of the Act.

2. Now coming to the quantum, though it is not in dispute by the wife that she is a graduate and claimed that prior to the marriage, if at all she worked, after marriage not working, and there is nothing to show that she is in employment, but for the contention of capable of earning and willfully not doing anything, which is a matter to be decided ultimately on merits and premature to go into that in the absence of showing she is in employment, much less, at any time after marriage and even it is shown by her that he married another woman

¹ (2001) DMC 749 (FB)

and got a minor child, by name, Lasya Sree under Ex.P.9-birth certificate of birth at Ganga Hospital, Maruthinagar, Hyderabad, which he disputed, leave about any such proof of the second marriage even void and any child in that wedlock and that child also entitled to maintenance as per Section 16 of the Hindu Marriage Act, 1956, that is also a subject matter in ultimate merits and premature to go into when he is disputing about the said marriage and child born to him. Now, undisputedly from the salary certificate of the month of December 2016, it shows his gross salary of Rs.17,000/- and net salary of Rs.13,978/- after deduction of EPF, ESI and professional tax. Even from the expression of the Apex Court placed reliance in **Dr.Kulbhushan Kumar v. Smt. Raj Kumari**², particularly at para 21, there is an observation of the maximum 25% of the net salary can be awarded towards maintenance to wife. There the income tax returns submitted by him taken as a criteria regarding his income even otherwise in dispute. Here, the salary certificate income is not in dispute. Undisputedly, even from the very order of the lower Court, he got sick and bedridden mother to whom some attendance also providing. Once such is the case, it is his obligation also to maintain aged mother even by taking the net salary of Rs.14,000/-, the maximum to be awarded to the wife and the minor child is maximum 1/4th out of it, Rs.3,000/- per month towards interim maintenance to

² AIR 1971 SC 234

the wife and child each is reasonable to reduce from what was awarded by the lower Court of Rs.10,000/- p.m. .

3. Accordingly, the revision is allowed in part by reducing the interim maintenance from Rs.10,000/- per month to Rs.3,000/- per month each to respondent Nos.1 and 2 herein. However, it is made clear that this conclusion no way prejudice the trial Court in deciding the main case on own merits in arriving an independent quantum from evidence on record.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

12th December 2017.

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Dr. B. SIVA SANKARA RAO, J

