

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2735 OF 2017

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the petitioner-husband challenging order dated 28-11-2016 passed in I.A.No. 790 of 2016 in F.C.O.P.No. 184 of 2014 on the file of the Court of IV Additional District Judge – cum – I Additional Family Judge, Ranga Reddy District (for short, 'the Court below'), whereby the Court below partly allowed the abovementioned I.A. filed by the respondent-wife.

2. The petitioner filed F.C.O.P.No. 184 of 2014 under Section 13 (1) (ia) and (iii) of Hindu Marriage Act, 1955 (for short, 'the Act'), before the Court below for dissolution of marriage between him and the respondent. During pendency of the O.P., the respondent filed I.A.No. 790 of 2016 under Section 24 of the Act for maintenance *pendente lite* @ Rs.50,000/- p.m. and legal expenses of Rs.1,00,000/-. The petitioner filed counter denying material allegations *inter alia* contending that the respondent forcibly occupied house of the petitioner at plot No. 50/E, Vijaypuri Colony, Phase-II, Vanasthalipuram, by broke open locks with her henchmen and has been residing with her father in one portion and let out other portion and thereby getting Rs.10,000/- per month and that the respondent filed D.V.C.No. 163 of 2013 claiming *interim* maintenance of Rs.50,000/- and therefore when two parallel proceedings are being prosecuted by the respondent, she is not entitled to claim maintenance under Section 24 of the Act. The Court below upon hearing argument of both counsel awarded *interim* maintenance of Rs.10,000/- p.m. and Rs.5,000/- towards legal expenses to the respondent. Aggrieved by the same, the present revision is filed by the petitioner.

3. At the hearing, while learned counsel for the petitioner has reiterated the grounds urged in the petition, none appeared for the respondent though notice is served.

4. The marriage between the petitioner and the respondent is not in dispute and filing of the O.P. and its pendency is also equally not in dispute. The respondent specifically pleaded that she had no independent source of income for her livelihood and the petitioner is earning substantial amount as salary besides income towards rent from house property. Learned counsel for the petitioner has contended that the respondent forcibly occupied house of the petitioner at plot No. 50/E, Vijaypuri Colony, Phase-II, Vanasthalipuram, and has been residing with her father in one portion and let out other portion and thereby getting Rs.10,000/- per month and therefore she is disentitled to claim *interim* maintenance. Learned counsel for the petitioner has filed additional documents along with the petition to substantiate his contention and drawn the attention of this Court to the allegation made in I.A.No. 791 of 2014 in O.P.No. 184 of 2014 filed by the respondent under Order XXXIX Rules 1 and 2 of CPC claiming temporary injunction during pendency of the petition that property situated in plot No. 50/E, Vijaypuri Colony, Phase-II, Vanasthalipuram, is in her occupation. This allegation at best would substantiate the contention of the petitioner that the respondent is in occupation of the house belonging to him. The petitioner also contended that the respondent let out one portion of the house on monthly rent of Rs.10,000/- but this fact is not substantiated on any material. However, the contention of learned counsel for the petitioner is that when the petitioner raised a specific plea that the respondent is earning Rs.10,000/- per month, the latter is supposed to file a re-joinder and in the absence of any re-joinder, the allegation that the respondent is earning Rs.10,000/- per month is deemed to have been

admitted and on the basis of Order VIII Rule 5 of CPC, learned counsel requested to accept the contention of the petitioner that the respondent is receiving Rs.10,000/- as rent by letting out the house which is occupied by the respondent forcibly.

5. Order VIII Rule 5 of CPC speaks about specific denial in written statement. According to Order VIII Rule 5 (1) of CPC, every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission. Thus, it is clear from the language used under Rule 5 of Order VIII of CPC that when a specific allegation is made and the same is not denied by filing any additional pleadings under Order VIII Rule 9 of CPC, the Court can treat it as an admission but the law laid down by various Courts on this aspect is clear that failure to file re-joinder cannot be treated as an admission. Delhi High Court in **Smt. Sahana Pal Vs. U.K.Samanta¹ and Anant Construction (P) Limited Vs. Ram Niwas²** and Punjab & Haryana High Court in **Sahab Singh Vs. Sajjan Kumar and others³** consistently held that failure to file re-joinder does not amount to admission and still it is for the parties to prove the case set up by them. Based on the principle laid down in the above judgments, it is difficult to accept the contention of learned counsel for the petitioner that failure to file re-joinder would amount to admission. Therefore, on the strength of Order VIII Rule 5 of CPC, it is difficult to accept the contention of learned counsel for the petitioner.

¹ MAT. APP. 41 OF 2011 DATED 24-07-2015

² 1995 RLR 20

³ (2003) 134 PLR 194

6. The other ground is that the respondent is a practicing dentist and earning Rs.40,000/- per month but this plea was not urged in the counter filed before the Court below. In the absence of any such plea before the Court below, failure to record a finding as to independent source of income of the respondent is not a ground to interfere with by this Court while exercising power under Article 227 of the Constitution of India. Admittedly, the petitioner is working as an engineer. The petitioner being husband of the respondent is expected to maintain his wife providing necessary maintenance when the respondent is not having any independent source of income. The petitioner did not produce any proof of income of the respondent and the respondent as well. Even then, the respondent being wife of the petitioner is expected to lead the same standard of life which the petitioner is leading. The additional documents filed by the petitioner are not relevant since the respondent herself admitted that she is in possession of the property. Taking into consideration the present cost of living and price index, awarding maintenance of Rs.10,000/- cannot be said to be excessive warranting interference of this Court. I, therefore, find no ground to interfere with the order passed by the Court below exercising power under Article 227 of the Constitution of India and the revision is liable to be dismissed.

7. The civil revision petition is dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No costs.

Date: 15-11-2018.

JSK

M.SATYANARAYANA MURTHY, J.