

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.766 of 2018

ORDER

This revision under Article 227 of the Constitution of India is filed questioning the order dated 14.10.2017 passed in I.A.No.349 of 2017 in F.C.O.P.No.605 of 2016 on the file of the Judge, Family Court, Secunderabad, dismissing the application filed under Section 24 of Hindu Marriage Act, 1955 (for short 'the Act') to grant interim maintenance.

2. The petitioner herein filed I.A.No.349 of 2017 to grant interim maintenance during pendency of the petition filed under Section 13(1)(i-a) of the Act by the respondent, contending that she has no means to maintain herself and that the respondent is working as Software Engineer earning more than Rs.1,00,000/-per month, but he completely neglected her without providing any maintenance and therefore, she sought for maintenance of Rs.25,000/- per month and Rs.50,000/-towards legal expenses.

3. The respondent filed counter denying the material allegations *inter alia* contending that after partition of suit schedule properties between the petitioner and her family members, the first floor of the building was allotted to the share of petitioner, who leased out the same to a Software company, receiving a sum of Rs.28,000/- per month towards rent and apart from it, she is receiving an amount of Rs.1,44,000/- towards advance lease amount. He contended that he also paid Rs.2 lakhs to petitioner and his father gave Rs.3 lakhs to her when the property was sold and thereby the petitioner is disentitled to claim any maintenance since she possessed

independent source of income sufficient to meet her needs. He contended that he admitted his two children in Kennedy International School by depositing Rs.6 lakhs for each child and that his father is a retired employee and his mother is patient. He also obtained housing loan and is paying Rs.51,000/- per month towards EMI. He further contended that the mother of petitioner is a family pensioner with whom she is residing and consequently, she is disentitled to claim interim maintenance.

4. The Judge, Family Court, upon hearing the arguments of both the counsel believed that the first floor of the building was allotted to the share of petitioner and she is collecting monthly rent at the rate of Rs.28,000/- per month besides receipt of Rs.1,44,000/- towards advance lease amount for the premises and when she is having sufficient independent source of income to maintain herself, she is disentitled to claim maintenance and thereby dismissed the petition.

5. Section 24 of Hindu Marriage Act, 1955, reads as under:

24. Maintenance pendente lite and expenses of proceedings:- Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable.

6. A fair reading of Section 24 of the Act, it is clear that when either the wife or husband has no independent source of income sufficient for her or him, the Court may award maintenance *pendente*

lite taking into consideration of the income. Here in this case, the partition deed was marked as Ex.R1 and the lease deed was marked as Ex.R2. These two documents clinchingly establish that the first floor of the building was allotted to the share of petitioner and the same was leased out to a software company on monthly rent of Rs.28,000/-. This source of income is sufficient to her to meet the expenses for her livelihood and when she possessed sufficient means, she is disentitled to claim maintenance *pendente lite* in view of the language used under Section 24 of the Act.

7. Therefore, the trial Court has rightly dismissed the petition declining to award maintenance *pendente lite* by exercising power under Section 24 of the Act and the finding of the trial Court does not call for interference by this Court while exercising jurisdiction under Article 227 of the Constitution of India. However, taking into consideration, the facts and circumstances, the Court below is directed to dispose of FCOP No.605 of 2016 as expeditiously as possible and in any event, not later than six months from the date of receipt of a copy of this order.

8. With the above direction, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

9th February, 2018

sj