

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 993 OF 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 01-12-2017 in I.A.No. 1654 of 2017 in O.P.No. 195 of 2015 on the file of the learned Principal Judge, Family Court, City Civil Court at Hyderabad (for short, 'the Court below'), whereby it awarded *interim* maintenance of Rs.8,000/- per month as against the claim of Rs.15,000/- p.m.

2. The petitioner herein filed O.P.No. 195 of 2015 before the Court below under Sections 13 (1) (ia) and (ib) of Hindu Marriage Act, 1955 (for short, 'the Act'), for dissolution of marriage by granting decree of divorce. The respondent herein filed I.A.No. 1654 of 2017 in the above O.P. under Section 26 of the Act for granting maintenance *pendente lite* to their minor child. It is the contention of the respondent that the petitioner is working as Police Constable at Hyderabad and possessed sufficient means to maintain the child and the child has no independent source of income sufficient to maintain and prayed to grant *interim* maintenance. The petitioner opposed the petition on various grounds mainly on the ground that the respondent possessed sufficient income *i.e.* drawing more than Rs.35,000/- per month and therefore the petitioner is not liable to pay maintenance to the child during pendency of the petition.

3. Section 26 of the Act deals with custody of children and Section 24 of the Act deals with maintenance *pendente lite* and expenses of proceedings either to wife or husband but the Court below awarded maintenance *pendente lite* under Section 26 of the Act and virtually it is an order under Section 24 of the Act. From a bare reading of Section 24 of the Act, maintenance can be granted only to wife or husband but not to children. On a strict construction, Section 24 of the

Act does not permit the Court to pass order granting *interim* maintenance to children but the judge made law permits the Court to pass an order granting *interim* maintenance to children who are neglected since either wife or husband is under obligation to maintain children. In ***Rita Dutta and another Vs. Subhendu Dutta***¹, the Apex Court held that children can also be granted maintenance under Section 24 of the Act although the wife is earning. In view of the law declared by the Apex Court, the petitioner is liable to pay maintenance to the minor child.

4. Coming to the quantum of maintenance, learned counsel for the respondent has submitted that the petitioner is working as Police Constable in Central Crime Station, Hyderabad, but no proof of income is produced before this Court. However, at the age of 38 being a senior Police Constable, the petitioner is expected to receive sufficient amount as salary and Rs.8,000/- is not huge amount for maintenance of the minor child since 1/4th of the amount can be awarded as maintenance. To enable the minor child to lead the same standard of life that being led by their parents, this Court feels that granting *interim* maintenance @ Rs.8,000/- p.m. is sufficient. The order of the Court below is free from illegality. Consequently, the civil revision petition is liable to be dismissed.

5. The civil revision petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this civil revision petition shall stand dismissed in consequence.

Date: 16-02-2018.

JSK

M.SATYANARAYANA MURTHY, J.

¹ 2005 (4) P.L.J.R. 67 (SC)