

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 1270 of 2018

ORDER:

1) Aggrieved by the order, dated 30.11.2017, passed in I.A.No.506 of 2016 in O.P.No.283 of 2014 on the file of the III Additional Senior Civil Judge, Kakinada, wherein the trial Court granted interim maintenance of Rs.20,000/- per month to the petitioner-wife from the date of petition ie. I.A.No.505 of 2016, the respondent-husband filed the present Civil Revision Petition under Article 227 of the Constitution of India.

2) For the sake of convenience the parties are hereinafter be referred to as arrayed in I.A.

3) The facts in issue are as under:

The respondent filed O.P.No.283 of 2014, seeking dissolution of marriage between him and the petitioner herein. Pending the said proceedings, the petitioner -wife filed I.A.No.506 of 2016 seeking interim maintenance of Rs.40,000/-. It is stated in the affidavit, which was filed in support of the petition that she was neglected by the respondent for the last three years and finally necked out of the matrimonial home in the 2nd week of June, 2015. At

present she is under the care of her maternal grandmother at Hyderabad and pursuing her further studies. It is stated that the marriage between her and the respondent is only an arranged marriage and their marriage was performed as per Hindu rites and customs. After the marriage she joined the respondent and both of them started living at Kanchi till last week of April, 2012. It is stated that when the petitioner suffered from anemia and passed out from the medical college, the respondent did not take care of her and he totally ignored her. His parents also did not take care of her. The respondent used to harass the petitioner both physically and mentally. In the month of June, 2012 the mother of the respondent called upon her to sign on divorce papers leaving all other issues to her. At that time, the paternal uncle and grandfather of the petitioner reconciliated the matter and put the parties together in the month of September, 2013, but the respondent did not change his attitude and continued to harass the wife. It is further stated that during the reconciliation proceedings, the petitioner went to her in-laws house on 08.06.2015, on that the respondent did not accept her, but insisted for dissolution of marriage. Without any valid reason, the respondent discarded the marital tie and refused to

maintain the petitioner. Now she is under the care of her maternal grandmother at Hyderabad and is pursuing her further studies. As she is not having any independent source of income, she claimed interim maintenance of Rs.40,000/- per month, pending O.P.

4) A counter came to be filed by the respondent denying the averments made in the petition. It is stated that some time after the marriage, all of a sudden the petitioner informed that she is leaving the house and is going to Hyderabad to pursue her further studies, where her grandmother is residing. During her short stay also, the petitioner picked up quarrels with the respondent on trivial and simple matters and her parents also started exhibiting odd behaviour of entering into quarrels with the inmates of the house. The petitioner on her own left the house and she is not interested to continue her marital commitment with the petitioner and as such she is not entitled to claim maintenance and permanent alimony. It is also stated that the petitioner did not co-operate for consummation of the marriage, as she is not interested to marry the respondent. Due to pressure of her parents she accepted the marriage. It is also stated that the respondent is not working anywhere

and did not earn anything and he is pursuing his post graduation course in MD (Anaesthesia) in Savitha Medical College. It is also stated that gold ornaments worth RS.20.00 lakhs were given to the petitioner by his parents and the same are in the custody of the petitioner. It is also stated that the petitioner is working in a hospital at Hyderabad and getting a salary of Rs.40,000/- per month and she is also running a clinic at her house, earning Rs.20,000/- per month. The respondent has no immovable properties in his name as such he is not able to pay the maintenance.

5) After considering the rival submissions made, the trial Court granted interim maintenance of Rs.20,000/- per month to the petitioner. Challenging the same, the present Civil Revision Petition came to be filed.

6) Learned counsel for the petitioner-husband would submit that the wife of the petitioner is a doctor working in a hospital at Hyderabad and earning Rs.40,000/- per month and as such she is not entitled for any maintenance. He further submits that the petitioner herein is not working anywhere and he is a student pursuing his post graduation course in Savitha Medical College and is unable to pay the

maintenance, as there are no properties standing in his name.

7) Learned counsel for the respondent-wife would submit that though the respondent-wife intends to join her husband, he harassed her both mentally and physically and forcibly necked her out from matrimonial house. He further submits that the petitioner-husband had a statutory obligation to maintain his wife. He further submits that in view of the admission made by the husband with regard to marriage, he is bound to maintain his wife and the wife is entitled for interim maintenance.

8) As seen from the record, there is no dispute with regard to the relationship between the parties. Though the respondent-husband claimed that the marriage was not consummated, but he could not plead the same in his pleadings in the divorce O.P. It is to be noted that after the marriage, the couple lived together for some time at different places till 08.06.2015. The claim of the respondent-husband is that the petitioner-wife, on her own, left the matrimonial house, whereas the claim of the wife is that the respondent necked her out from the matrimonial house.

9) The question that falls for consideration is whether the respondent necked out the petitioner or whether she left the house on her own, which has to be decided during the trial. The respondent-husband alleges that the petitioner is doing a job in Hyderabad and getting more than Rs.40,000/- per month, but he failed to produce any evidence to show that she is also an earning member having sufficient means to maintain herself. The respondent-husband further states that he had no income of his own source and he is pursuing his PG course in Savitha Medical College, Chennai. In support of his plea, the respondent filed Ex.B3, which shows that he is studied PG Course in Savitha Medical College in Chennai from 2015 to 2018.

10) Admittedly, the petitioner is the legally wedded wife of the respondent and residing with her paternal grandmother at Hyderabad. She is maintained by her parents as she has no independent source of income. Under Hindu law, it is the spiritual duty of the husband to maintain his wife and this duty continues from the date of marriage till the dissolution of marriage through a decree of divorce. The main object of section 24 of the Hindu Marriage Act is to grant maintenance to the wife so that she can have financial

assistance and she is able to maintain herself during the pendency of proceedings.

11) It is to be noted that where there was sufficient means in the family of the husband, on the strength of which the husband got married, he has to share the burden to support his wife during the course of annulment of such marriage. Admittedly, both the petitioner and respondent are doctors and they are pursuing their P.G. course. It is also to be noted that the income tax return of the respondent for the year 2015-2016, which was passed on across the Bar by the petitioner, would show that the respondent had paid income tax of Rs.65,592/- for the assessment year 2015-2016. Hence, it is clear that the respondent has sufficient means to pay the maintenance. Apart from that, no proof has been filed by the respondent to show that the petitioner is having sufficient income to maintain her.

12) In *Amarjit Kaur vs. Harbhajan Singh and another*¹ the Apex Court held as under:

“Section 24 of the Hindu Marriage Act, 1955 empowers the court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent

¹ (2003) 10 SCC 228

income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the petitioner and the respondent. Once the High Court, in this case, has come to the conclusion that the wife - appellant herein has to be provided with the litigation expenses and monthly maintenance, it is beyond comprehension as to how, de hors the criteria laid down in the statutory provision itself, the court could have thought of imposing an extraneous condition, with a default clause which is likely to defeat the very claim which has been sustained by the court itself. Consideration as to the ultimate outcome of the main proceeding after regular trial would be wholly alien to assess the need or necessity for awarding interim maintenance, as long as the marriage, the dissolution of which has been sought, cannot be disputed, and the marital relationship of husband and wife subsisted. As noticed earlier, the relevant statutory consideration being only that either of the party, who was the petitioner in the application under Section 24 of the Act, has no independent income sufficient for her or his support, for the grant of interim maintenance, the same has to be granted and the discretion thereafter left with the court, in our view, is only with reference to reasonableness of the amount that could be awarded.”

13) In *Manish Jain v. Akanksha Jain*² the Apex Court held as under:

“14. Section 24 of the HM Act empowers the Court in any proceeding under the Act, if 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is “Maintenance pendente lite and expenses of proceedings”. The Section, however, does not use the word “maintenance”; but the word “support” can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife’s parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay

² (2017) 4 ALD 36 (SC)

maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court. “

14) In view of the judgments referred to above and taking into consideration the status of the parties and the amount which should aid the wife to live with a similar life style as she enjoyed in her matrimonial home, this Court is of the opinion that the amount awarded by the trial Court is just and proper, but however the same should be from the date of order and not from the date of petition in the absence of any reasons for the same.

15) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.07.2018
gkv