

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1723 OF 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed challenging the order dated 17.01.2018 in I.A. No.66 of 2017 in F.C.O.P. No.899 of 2015 passed by the Judge, Family Court at Secunderabad, whereby the learned Judge allowed the petition filed under Section 24 of Hindu Marriage Act (for short 'the Act') while granting maintenance *pendente lite* @ Rs.3,000/- per month.

The petitioner filed the O.P. under Section 13(1)(ia) of the Hindu Marriage Act, 1955 read with Section 7(1) of the Family Courts Act 1984 for dissolution of marriage and it is pending before the Judge, Family Court, City Civil Courts, Secunderabad.

Pending disposal of the O.P., the respondent herein filed an interlocutory application under Section 24 of the Act for grant of maintenance *pendente lite* @ Rs.15,000/- per month for herself and for her son alleging that the petitioner herein is working in a godown and doing business of electronic goods and his parents own a three storied building at Banjara hills, and collecting rent for the said premises and thus the parents of the petitioner are self sufficient and not dependent upon any one, but the petitioner neglected and refused to provide anything for her and her son and hence sought for grant of maintenance *pendente lite* @ Rs.15,000/- per month. The petitioner herein filed counter denying material allegations *inter alia* contending that the respondent is a graduate, engaged in employment, earning Rs.8,000/- per month and that respondent is leading comfortable life and prayed for dismissal of

the petition. The trial court, upon hearing argument of both the counsel, awarded maintenance *pendente lite* @ Rs.3,000/- per month.

Assailing the order, the present revision is filed on various grounds mainly contended that the petitioner has no sufficient income for his livelihood and it is contended that he has sufficient means and possessed both movable and immovable properties is not based on any material, but the courts below committed an error in allowing the petition while granting maintenance *pendente lite* @ Rs.3,000/- per month for the respondent and her son and prayed to set aside.

During hearing, learned counsel for the petitioner reiterated the grounds urged in the petition and contended that the employment of the petitioner is at stake, granting maintenance *pendente lite* @ Rs.3,000/- per month is excessive, that the respondent is also earning sufficiently for her livelihood and prayed to set aside the order passed by the court below at the stage of admission.

As seen from the allegations made in the affidavit and the material produced on record that the petitioner is working as labourer in godown and earning an amount of Rs.5,000/- per month and in view of the law laid down by the Apex Court in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**¹, 1/4th of the salary can be awarded to the wife in the proceedings

¹ 2017 (5) SCALE 5

filed under Section 125 Cr.P.C. relying on the judgment in **Kulbhushan Kumar vs Raj Kumari & Anr²**.

Therefore, the respondent is entitled to an amount of @ Rs.1,250/- per month for herself and the child is also entitled to an amount of Rs.1,250/-, and in total they are entitled to maintenance *pendente lite* @ Rs.2,500/- in all, if the income of the petitioner is accepted.

According to the respondent, the parents of the petitioner possessed three storied building in Banjara hills and collecting rents. But the petitioner did not possess any other property of his own at any place even according to the allegations made in the affidavit. However, as per Section 24 of the Act, 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, but the court can award maintenance *pendente lite* when maintenance petition filed under section Hindu Marriage Act, but the quantum is only based on the income both the parties to the petition. Therefore, granting maintenance *pendente lite* @ Rs.3,000/- per month for both the child and wife is excessive, but they are entitled to maintenance *pendente lite* @ Rs.2,500/- per

² 1971 AIR 234

month, accepting the income of the petitioner @ Rs.5,000/- per month.

Accordingly, the civil revision petition is disposed of modifying the order dated 17.01.2018 in I.A. No.66 of 2017 in F.C.O.P. No.899 of 2015 passed by the Judge, Family Court, Secunderabad, reducing the maintenance *pendente lite* to an amount of Rs.2,500/- per month from Rs.3,000/- per month. No costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date:15.03.2018
BV

M.SATYANARAYANA MURTHY, J

