

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1703 of 2011

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.575 of 2010 in O.P.No.1069 of 2009 dated 10.03.2011 passed by the Judge, Additional Family Court, Visakhapatnam, whereby the petition filed under Section 24 of Hindu Marriage Act, was allowed and granted interim maintenance at the rate of Rs.6,000/- per month from the date of petition i.e. 24.11.2010.

The petitioner is the respondent before the trial Court and aggrieved by the order passed by the trial Court, the present revision is filed on various grounds while contending that the order passed by the Court awarding interim maintenance at the rate of Rs.6,000/- per month is erroneous and the amount awarded maintenance pendente lite is exorbitant.

The respondent herein filed petition for grant of interim maintenance alleging that the petitioner herein is drawing gross salary of Rs.29,735/- in the month of July, 2010 and he has drawn Rs.21,000/- in the earlier month and the petitioner is not providing any maintenance to the respondent during the pendency of the petition filed for divorce. The trial Court concluded that the petitioner herein was receiving Rs.20,000/- on average every month as gross monthly income and Rs.12,000/- per month as net income after statutory deductions. The respondent claimed maintenance at the rate of Rs.8,000/- per month and the Court below observed that

30% to 35% of salary of the employee can be awarded as interim maintenance taking into consideration of status etc.

The basis for ordering maintenance at the rate of Rs.6,000/- per month is the presumption that 30% to 35% of salary of the employee can be awarded as maintenance, but the same is contrary to the law declared by the Apex Court in “**Dr.Kulbhushan Kumar v. Raj Kumari**”¹. As per the principle laid down in the said judgment, the respondent is entitled to claim 1/4th of the net salary of her husband as maintenance.

The Apex Court in its later judgment rendered in “**Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**”² held as follows:

“Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in Sub-section (1) of Section 25. In exercising the power Under Section 25 (2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under Sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem just.”

If the principle laid down in “**Dr.Kulbhushan Kumar v. Raj Kumari**” and “**Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**” (referred supra) is applied to the present facts of the case, the petitioner was receiving average gross salary of

¹ (1970) 3 SCC 129

² AIR 2017 SC 2383

Rs.20,000/- per month and after statutory and other deductions, he was receiving only Rs.12,000/- per month as net income, but the salary slip is not placed on record by any of the parties. However, after statutory deductions the net approximate income will be around Rs.15,000/- per month. The 25% of which comes to Rs.3,750/- per month, hence the respondent is entitled for Rs.3,750/- per month as interim maintenance as per the principles laid down in on “***Dr.Kulbhushan Kumar v. Raj Kumari***” and “***Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy***” (referred supra).

Therefore, the interim maintenance awarded by the trial Court is reduced to Rs.3,750/- per month from Rs.6,000/- per month since the conclusion arrived at by the trial Court that 30% to 35% can be awarded as interim maintenance is illegal and not based on any law. Accordingly, the order passed by the trial Court is modified, reducing the interim maintenance to Rs.3,750/- per month from Rs.6,000/- per month.

With the above modification, the civil revision petition is disposed of. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

21.02.2018
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