

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3291 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, questioning the order in I.A.No.14 of 2016 in FCOP No.42 of 2015 dated 11.06.2017 passed by the Judge, Family Court at Secunderabad, wherein, the Court below awarded maintenance *pendente lite* to the petitioner/wife @ Rs.5,000/- and Rs.10,000/- towards legal expenses.

The petitioner/husband filed FCOP No.42 of 2015 for dissolution of marriage by decree of divorce, making several allegations.

Whereas, the respondent/wife contested the matter and filed I.A.No.14 of 2016 under Section 24 of Hindu Marriage Act, alleging that, she had no independent source of income sufficiently for her maintenance. Further, she stated that she is facing difficulties to maintain herself and her children while attending to tailoring work. Further, the maintenance awarded by the Court in proceedings under Section 125 Cr.P.C is not sufficient and therefore, requested the Court below to grant Rs.25,000/- per month towards interim maintenance, as the respondent is working in Indian Railways and earning sufficient income.

The petitioner/husband in I.A.No.14 of 2016 filed counter, alleging that the respondent/wife and her children were granted interim maintenance @ Rs.15,000/- per month vide order dated 08.02.2014 in I.A.No.572 of 2013 in the proceedings under Section

125 Cr.P.C in M.C.No.216 of 2013 on the file of Judge, Family Court, Nellore and in pursuance of the said order, the petitioner/husband paid a total sum of Rs.85,000/- to the respondent/wife by way of deposit to the credit of the said case and attachment was subsisting for recovery and recovered Rs.75,000/-. Thus, the respondent/wife has got sufficient means to maintain herself and prayed for dismissal of the petition.

Upon hearing argument of both the counsel, the Judge, Family Court, allowed I.A.No.14 of 2016 ordering the petitioner/husband to pay maintenance *pendente lite* to the petitioner/wife @ Rs.5,000/- and Rs.10,000/- towards legal expenses. Aggrieved by the said order, the present civil revision petition is filed.

The main grievance of the petitioner/husband in the present revision is that, the respondent/wife collected arrears of maintenance of Rs.85,000/- and there was subsisting attachment over the salary for recovery of arrears of Rs.75,000/-. Besides that, the take home pay of the petitioner/husband is only Rs.11,115/- and in such case, grant of additional amount as maintenance *pendent elite* is illegal and prayed to dismiss I.A.No.14 of 2016 by allowing the present civil revision petition.

Sri T.S. Rayalu, learned counsel for the petitioner would draw the attention of this Court to various deductions made in the salary slip of the petitioner vis-à-vis deductions towards LIC, Welfare Fund, ECSS, recovery of attachment of salary, etc., to substantiate his contention that the petitioner is unable to pay

maintenance, as awarded by the Court below and prayed to set-aside the same.

Learned counsel for the petitioner also contended that major part of the salary of the petitioner is being deducted to pay the arrears of maintenance in the proceedings under Section 125 Cr.P.C and there is a subsisting attachment for recovery of arrears of maintenance of Rs.75,000/- @ Rs.12,000/- per month. But, that is not a ground to reduce the amount which was awarded by the Court below.

Undisputedly, the petitioner is working in Mechanical Department in the Indian Railways, earning a gross salary of Rs.70,860/- per month. Out of the said amount, the gross deductions are Rs.59,745/- and take home pay is Rs.11,115/-. Out of the total deductions, the premium paid towards LIC, ECCS, MBF, Welfare Fund, CMTD are not statutory deductions and few deductions are statutory deductions. Therefore, those amounts can be said to be savings for this petitioner and if, those deductions were not taken into consideration, the gross salary of the petitioner/husband would be more than Rs.70,000/-.

Section 24 of the Hindu Marriage Act states that, 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.

Therefore, the rule specifies that, when either of the husband or wife had no independent source of income or sufficient sources to meet the necessities to lead ordinary life either wife or husband who is earning member shall pay maintenance to other. What is the quantum of maintenance is again a question to be decided.

In **Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and Anr.**¹ and **Kalyan De Chowdhury v. Rita Dey Chowdhury Nee Nandy**², while deciding grant of interim maintenance payable under Section 125 of Cr.P.C, the Supreme Court in both the judgments referred supra, consistently held that 1/4th of the salary shall be paid as maintenance to the wife. If, such principle is applied to the present case, the maintenance payable to the respondent/wife is entitled to claim more than what she is getting as maintenance under Section 125 Cr.P.C. But, the maintenance under Section 125 Cr.P.C is permanent in nature, whereas, the maintenance under Section 24 of Hindu Marriage Act is for a limited period i.e. during pendency of the petition and the same cannot be equated with maintenance under Section 12 Cr.P.C. However, the respondent/wife is entitled to claim maintenance *pendente lite* during pendency of the petition, though she is receiving maintenance in proceedings under Section 125 Cr.P.C, since the amount that the respondent/wife is getting is less than the amount as prescribed in **Dr. Kulbhushan Kumar**¹ and **Kalyan De**

¹ AIR 1970 SC 234

² AIR 2017 SUPREME COURT 2383

Chowdhury² cases. Therefore, the Trial Court rightly awarded maintenance @ Rs.5,000/- per month to the respondent/wife, in addition to the maintenance already awarded in proceedings under Section 125 Cr.P.C. Hence, I find no ground to set-aside the order passed by the Trial Court, as it is free from any legal infirmity, warranting interference of this Court, while exercising power under Article 227 of the Constitution of India. Therefore, the order passed by the Trial Court is upheld and the civil revision petition is devoid of merits and it deserves to be dismissed.

In the result, the civil revision petition is dismissed, while directing the Judge, Family Court at Secunderabad, to dispose of F.C.O.P.No.42 of 2015 pending on its file, as expeditiously as possible, in any event, not later than six months from the date of receipt of copy of this order.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.02.2018

SP