THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5102 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order in I.A.No.96 of 2017 in FCOP No.625 of 2016 passed by IV Additional District Judge-cum-Additional Family Judge, L.B.Nagar, Rangareddy.

Respondent Nos. 1 and 2 filed petition under Section 24 of the Hindu Marriage Act before the trial Court for grant of maintenance at Rs.15,000/- per month to the respondent Nos. 1 and 2 and Rs.5,000/- towards legal expenses, alleging that respondent No.1 had no independent source of income to maintain herself and her child; whereas the petitioner herein is working and earning not less than Rs.1,50,000/- by carrying on business and comfortable living with his earnings and the respondents are not getting income from any source and therefore, sought for maintenance *pendente lite* besides litigation expenses.

The Petitioner herein/husband filed Counter alleging that respondent No.1 is operating a fancy shop under the name and style of Lakshmi Empourim Located at Launger House, Hyderabad, but she closed the shop even prior to the marriage and thereafter, Respondent No.1 had contacted an amount of Rs.1,50,000/- and renovated the shop in the year 2008 and thus, she used to earn Rs.50,000/- per month and he also paid an amount of Rs.3,00,000/- on 02.07.2007 to the father of his wife. As a Junior Advocate, he is getting meagre income and he is not in a position to pay maintenance to both the respondents and prayed for dismissal of the petition.

The relationship of the petitioner herein with respondent No.1 and blessing of the child/second respondent during their wedlock is not in dispute. But, a petition was filed by the husband under Section 13 (1) (ia) (ib) of Hindu Marriage Act for dissolution of the marriage by granting decree of divorce on various grounds. During pendency of the petition, the respondents/wife and child filed petition under Section 24 of the Hindu Marriage Act, for grant of interim maintenance, *pendente lite* at Rs.15,000/- per month besides legal expenses, alleging that respondent No.1 is no independent source of income and whereas her husband is practicing Advocate and earning sufficiently. The trial Court accepted that the petitioner herein/husband is having sufficient source of income and whereas the respondents herein did not possess any means for their livelihood and to meet legal expenses.

Aggrieved by the impugned Order, the present Revision is filed on various grounds, mainly, contending that when the respondent No.1 is having independent source of income by operating a shop, she is not entitled to claim any maintenance and whereas the petitioner is only a Junior Advocate and not getting sufficient income to maintain himself and requested this Court to set aside the impugned order by allowing the present Revision.

During hearing, learned counsel for the petitioner/husband filed an affidavit of the mother of the respondent No.1 and mother-in-law of the petitioner before this Court alleging that mother of respondent No.1 obtained premises municipal bearing No.9-1-41/22/3 situated at R.P. High School Building, Langer House, Hyderabad, from Sri Ram Prasad Tiwari on lease and running the shop in the name and style of Laxmi Emporium.

Taking advantage of the affidavit, the learned counsel for the petitioner further submits that when the business is registered in the name of the respondent No.1 and getting sufficient income, she is not entitled to claim interim maintenance.

Section 24 of Hindu Marriage Act deals with maintenance *pendente lite* and expenses of proceedings. According to it, 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, on the application made by either of the party, the Court can grant maintenance *pendente lite* besides legal expenses.

Here, the case of the petitioner herein/husband is that respondent No.1 is running shop in the name and style of Laxmi Emporium. The affidavit of the mother of respondent No.1 discloses that she obtained premises from Sri Ramprasad on lease to run a shop, but due to sentiment, she obtained premises in the name of her daughter. It is not the case of the petitioner herein/husband that she is having sufficient means to meet the expenses and to maintain herself and respondent No.2 during pendency of the petition and how much she is earning even assuming that respondent No.1 is running business in the name and style of Laxmi Emporium. In the absence of any proof that she is carrying on business by obtaining license, it is difficult to believe that respondent No.1 is carrying on business and earning sufficient income for her livelihood and to maintain her child.

Whereas the petitioner is practicing Advocate expecting to earn minimum amount and in such case, ordering maintenance during *pendente lite* of the petition at Rs.5000/- to respondent No.1 and Rs.2,500/- to respondent No.2 is just and reasonable since Rs.5,000/- is not sufficient to a single independent person during these days depending upon the cost of living and price index. Therefore, I find no ground to interfere with the Order passed by the trial Court.

Accordingly, this Civil Revision Petition is dismissed. However, the Judge, Family Court, is directed to dispose of the main petition as early as possible, not later than Six (06) months from the date of receipt of a copy of this Order. As a sequel, miscellaneous Petitions, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 15-11-2018
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt. 15-11-2018

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