

**HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**Civil Revision Petition No.108 of 2015**

**ORDER:**

This Civil Revision Petition is filed questioning the order dated 23.12.2014 in I.A.No.180 of 2013 in O.P.No.702 of 2012. Said I.A.No.180 of 2013 is filed under Section 18 of the Hindu Adoption and Maintenance Act by wife as the petitioner claiming maintenance @ Rs.80,000/- per month including arrears of past maintenance of Rs.28.00 lacs. Verified counter was filed by the respondent. In addition, I.A.No.180 of 2013 is filed claiming interim maintenance of Rs.80,000/- per month. Said I.A. was heard by the Court below and the impugned order came to be passed, by which a sum of Rs.25,000/- per month was directed to be paid starting from 10.01.2015. Said order is now assailed in this revision petition.

2. This Court has heard Sri P.R.K.Amarendra Kumar, learned counsel for the petitioner and Sri K.Bhaskara Rao, learned counsel for the respondent.

3. Learned counsel for the petitioner points out that the impugned order is passed only on the basis of the downloaded copy of a document from the site of Greater Visakha Municipal Corporation, Visakhapatnam dated 15.03.2014. According to this document, the respondent therein is having twelve flats. Basing on the said document the Court below fixed the interim maintenance @ Rs.25,000/- per month. Learned counsel for the petitioner argues that a very detailed counter was filed in the lower Court in the main case itself. Learned counsel submits that interim

maintenance cannot be granted on this basis and that atleast some enquiry should have been conducted by the Court below.

4. In response thereto, learned counsel for the wife, who is the respondent in the revision petition, states that arrears of maintenance have not been paid. It is submitted that the petitioner has substantial properties and doing business in the name and style of “International Shipping Corporation”. Learned counsel for the respondent submits that the order passed is an interim order and that the question of elaborate evidence etc. will only arise when the main O.P. itself is being disposed of. He therefore supports the order.

5. This Court, after considering both the submissions made, notices that except the document which is styled and marked as Ex.P1 there is absolutely no other proof that is available. Ex.P.1 document is also purportedly downloaded from the website. It is not clear from the impugned order as to who downloaded it and whether the same was certified or not under Section 65B of the Indian Evidence Act, 1872 as amended recently. Merely on the basis of the downloaded copy the Court below came to the conclusion that the income of respondent is of Rs.60,000/- to Rs.80,000/- per month. Therefore, the Court below ordered payment of interim maintenance @ Rs.25,000/- per month. This Court is of the opinion that the Court was under duty to pass an order based on the pleadings and on the basis of the evidence. The mere fact that the flats are in the name of husband will not lead to the conclusion that he is getting income of Rs.60,000/- to Rs.80,000/- per month. It is not clear that the flats are still standing on his name and the same are

rented out to others and the same are vacant. In the absence of any evidence, this Court is of the opinion that the impugned order suffers from a non-application of mind. This Court is of the opinion that the revision is bound to succeed. The order passed by the Court below does not stand scrutiny under law.

6. It is submitted that the main O.P.No.702 of 2012 is still pending and is ripe for trial. Noting this fact, the Court below is directed to take up the main case O.P.No.702 of 2012 on a priority as the O.P. is of the year 2012 giving liberty to both the parties to introduce evidence and take steps to dispose of the matter within six (6) months from the date of receipt of a copy of this order. Requests for adjournment should be dealt with very strictly. The Court below should make every endeavour to proceed with the hearing of the case on a priority.

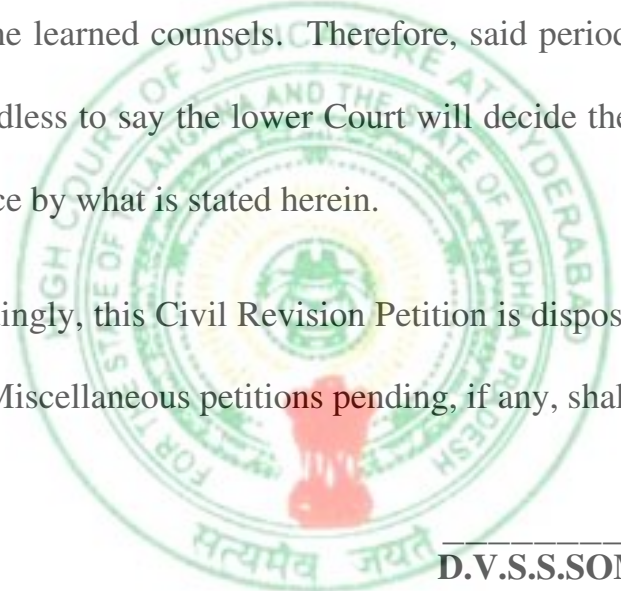
7. At this stage, learned counsel for the respondent submits that earlier interim maintenance, that has been granted, has not been paid and that there are huge arrears of maintenance pending. It is also his submission that the respondent herein is suffering from financial difficulties and therefore, some interim amount should be directed to be paid as maintenance. Whereas, the learned counsel for the revision petitioner opposes the same.

8. This Court however, after viewing the fact that from 2015 the Civil Revision Petition has been pending and there has been a stay, is of the opinion that as a measure of interim maintenance without going into merits/demerits of the matter the revision petitioner should pay

Rs.5,000/- (Rupees five thousand only) per month from January, 2015 onwards till date and continue to pay @ Rs.5,000/- (Rupees five thousand only) per month till disposal of O.P. No.702 of 2012. The Court below, while fixing the figure of maintenance, shall take into account the sum of Rs.5,000/- that has been awarded by this Court in case it awards maintenance above Rs.5,000/-. If not, this order will operate till the final disposal of the main case only. The arrears of maintenance @ Rs.5,000/- per month shall be paid within two (2) months from the date of this order. This order is being dictated in the presence of the learned counsels. Therefore, said period of two months is fixed. Needless to say the lower Court will decide the matter without being influence by what is stated herein.

Accordingly, this Civil Revision Petition is disposed of. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

14.12.2018  
MVA

D.V.S.S.SOMAYAJULU, J