

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4838 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order in I.A.No. 910 of 2016 in O.P.No.461 of 2014 dated 13.07.2017 passed by the Judge, Family Court at Hyderabad directing the petitioner/husband to pay maintenance @ Rs.10,000/- per month to the respondent/wife on or before 5th of every month from the date of petition during pendency of O.P.No.461 of 2014 and to pay Rs.20,000/- towards legal expenses.

The respondent/wife filed interlocutory application in O.P.No.461 of 2014 for grant of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, as the respondent allegedly left the company of the petitioner without any reasonable cause. During pendency of O.P.No.461 of 2014, I.A.No.910 of 2016 was filed under Section 24 of Hindu Marriage Act for grant of inter maintenance, alleging that the respondent/wife has no means much less sufficient means to maintain herself and the petitioner/husband neglected her to provide any maintenance during pendency of the petition, though possessed sufficient means, he is working as an attender and earning substantially and sought for maintenance pendente lite, under Section 24 of Hindu Marriage Act. The petitioner/husband filed counter denying material allegations and contended that the respondent/wife is working as an attender in Durgabai Deshmukh Hospital where as the petitioner/husband is working as an attender in Intelligence

Bureau and that the maintenance case filed under Section 125 was already settled before Lok Adalat on 22.04.2000 awarding maintenance @ Rs. 500/- per month, there by the respondent/wife is not entitled to claim maintenance pendante lite under Section 24 of Hindu Marriage Act.

Upon hearing argument of both the Counsel, the Trial Court passed an order directing the petitioner/husband to pay maintenance of Rs.10,000/- per month to the respondent/wife on or before 5th of every month from the date of petition during pendency of O.P.No.461 of 2014 and to pay Rs.20,000/- towards legal expenses.

Aggrieved by the said order, the present civil revision petition is filed mainly on the ground that when a maintenance case was already settled before the Lok Adalat and awarded Rs. 500/- per month to the respondent/wife, she is further not entitled to claim maintenance pendant elite. Apart from that, the respondent/wife is working as an attender in Durgabai Deshmukh Hospital earning Rs. 15,000 per month and she possessed independent source of income to maintain herself, thereby, she can maintain herself and prayed this Court to set aside the order passed by the Trial Court in I.A.No.910 of 2016 by allowing this civil revision petition.

During hearing, learned counsel for the petitioner reiterated the said contention raised in the revision petition and sought to allow the civil revision petition by setting aside the order passed by the Trial Court.

Admittedly, the petitioner is working as a Subordinate Staff in Intelligence Bureau and earning gross salary of Rs.44,443/- and after deductions of Rs.18,090/-, he is receiving net salary of

Rs.26,353/-. Hence, the earnings of the petitioner are not in dispute but, whereas the respondent/wife is allegedly earning Rs.15,000/- per month by working as an attender in Durgabai Deshmukh Hospital which is not supported by any documentary evidence. Therefore, in the absence of any proof that the respondent/wife is working as an attender and earning Rs.15,000/- per month, interim maintenance cannot be denied.

The other contention raised before this Court is that, the wife is receiving Rs.500/- per month towards maintenance which was awarded by the Lok Adalat on 22.04.2000 in M.C.No.24 of 2000. The amount paid towards award will not be sufficient even for travelling expenses in this case. However, the respondent/wife had no independent source of income or any other source to meet her expenses and necessities to lead ordinary life.

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 wife would be more than Rs.10,000/-, but, the Trial Court limited the amount to Rs.10,000/- only. Therefore, I am not inclined to interfere with the findings recorded by the Trial Court. However, the Judge, Family Court at Hyderabad is directed to dispose of O.P.No.461 of 2014, as expeditiously as possible, in any event not later than six months from the date of receipt of the copy of this order.

In the result civil revision petition is dismissed

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

JUSTICE M. SATYANARAYANA MURTHY

Date:08.02.2018

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¹ AIR 1970 SC 234

² AIR 2017 SUPREME COURT 2383