

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 781 OF 2016

ORDER:

This petition under Article 227 of the Constitution of India is filed by the petitioner-husband feeling aggrieved by order and decree dated 23-10-2015 in I.A.No. 286 of 2015 in F.C.O.P.No. 518 of 2013 on the file of the learned Judge, Family Court at Secunderabad (for short, 'the Court below').

2. The respondent-wife filed the abovementioned O.P. before the Court below for dissolution of marriage between her and the petitioner by granting decree of divorce. During pendency of the O.P., the respondent filed the above I.A. under Section 24 of Hindu Marriage Act, 1955 (for short, 'the Act'), for grant of *interim* maintenance and legal expenses alleging that her marriage with the petitioner was solemnized on 15-08-2012 as per Hindu rites and customs at Gurudwara, Ludhiana, Punjab State; that at the time of marriage, she was working as Associate Research Manager in Cognizant Company and was earning Rs.1,30,000/- per month; that at the instance of the petitioner, she resigned to her employment and joined him at Ludhiana to lead marital life where she led marital life only for five days and thereafter, she came back to Hyderabad; that from there, they went to Singapore on 28-10-2012 where the petitioner was working as Senior Design Engineer and earning more than Rs.2,00,000/- per month; that after reaching Singapore, the petitioner started pressurizing the respondent to part with her salary arrears and terminal benefits which she got after resignation; that the petitioner refused and neglected to take care of her and that she is living separately from 19-02-2013 and as she has no means to maintain herself, she filed the above I.A.

3. The petitioner filed counter affidavit denying material allegations *inter alia* contending that the respondent possessed sufficient means to maintain herself, that he is drawing salary of 3,900 SGD approximately (equivalent to Rs.1,70,000/-) and the allegation that he was earning more than Rs.2,00,000/- is false and prayed for dismissal of the petition.

4. During hearing, no oral evidence is adduced on either side. However, Exs.R1 to R6 are marked on behalf of the respondent and no documents are marked on behalf of the petitioner.

5. Upon hearing argument of both learned counsel, the Court below, having found that the wife is supposed to maintain same standard of life which her husband is maintaining, granted *interim* maintenance of Rs.50,000/- p.m. while awarding Rs.20,000/- towards legal expenses by the order under challenge.

6. The impugned order is now under challenge by the petitioner on the ground that when the respondent possessed independent means, she is disentitled to claim maintenance in view of the language used in Section 24 of the Act and that in view of the admitted facts and evidence produced before the Court below which clinches the issue of possessing independent source of income to meet her living expenses, granting maintenance @ Rs.50,000/- is erroneous and finally prayed to set aside the same.

7. Learned counsel for the petitioner would draw the attention of this Court to various findings recorded by the Court below with regard to independent means possessed by the respondent to contend that grant of maintenance despite possessing independent means sufficient to maintain her livelihood is illegal whereas learned counsel for the respondent would contend that the petitioner is legally liable to maintain the respondent as the former deserted the latter and

placed reliance on the judgment of the Apex Court in ***Manish Jain Vs. Akanksha Jain***¹ and the judgment of Calcutta High Court in ***Chitra Sengupta Vs. Dhruba Jyoti Sengupta***² in support of his contention.

8. In view of rival contentions raised before this Court, the point that arises for consideration is

"Whether the respondent-wife possessed independent means for her livelihood during pendency of the petition, if not, is she entitled to claim interim maintenance and if so, at what rate?"

9. The marital relationship between the parties is not in dispute so also their separate living since 19-02-2013. Apart from that, the respondent herself admitted that she was working in Cognizant Technology Services Private Limited, Hyderabad, and earning Rs.1,30,000/- p.m. by the date of her marriage. While the contention of learned counsel for the respondent is that the respondent resigned to her employment, he however admitted that she is drawing Rs.1,20,000/- after rejoining in employment. Learned counsel for the petitioner produced Photostat copy of T.D.S. form of the respondent for the financial year 2015-16 which disclosed that the respondent joined in service in the month of April, 2014, and is earning Rs.1,20,000/- per month towards salary. In view of the material available on record that the respondent is earning Rs.1,20,000/- per month, it is necessary to advert to Section 24 of the Act which reads as under:

"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

¹ 2017 AIR (SC) 1640

² AIR 1988 CALCUTTA 98

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."

In view of Section 24 of the Act, the pre-condition to grant maintenance is that either wife or husband, who claimed maintenance *pendente lite*, has to satisfy the Court that such petitioner has no independent income sufficient for her or his support and necessary expenses of the proceedings. In the case on hand, the respondent was earning Rs.1,30,000/- by the date of her marriage with the petitioner and later from April, 2014 onwards, she is earning Rs.1,20,000/- vide Ex.R1. During cross-examination in F.C.O.P.No. 518 of 2013, the respondent made a categorical admission that she is an income tax assessee for the financial year starting from April, 2014, to March, 2015. Therefore, this piece of evidence is suffice to conclude that she possessed means from April, 2014, by earning Rs.1,20,000/-. The other contention of learned counsel for the respondent is that she is maintaining her ailing parents while claiming maintenance from her alleged deserted husband and therefore she is constrained to join in service on account of ill health of her parents but that is not a ground to grant maintenance *pendente lite* when she herself admitted that she is earning Rs.1,20,000/- from April, 2014 on wards.

10. Learned counsel for the respondent has placed reliance on **Manish Jain** (1st *supra*). In para No. 14 of the above judgment, the Apex Court noted the purport of Section 24 of the Act. Section 24 of the Act empowers the Court in any proceedings under the Act if it appears to the Court that either wife or husband as the case may be has no independent income sufficient for her or his support and necessary expenses for the proceedings, on application, the Court may grant appropriate maintenance taking into consideration of the income of

both parties. In para No. 15, the Apex Court further held that when the wife has independent source of income sufficient to meet her expenses, she is disentitled to claim maintenance and the capacity of the spouse to pay maintenance is also to be taken into consideration while assessing the amount towards *interim* maintenance. In **Chitra Sengupta** (2nd *supra*), the High Court of Calcutta laid down the same principle. In the present case, the respondent joined in service in the month of April, 2014, and became an income tax assessee as admitted in her cross-examination and therefore from April, 2014, she is not entitled to claim maintenance.

11. The respondent filed the abovementioned I.A. in F.C.O.P.No. 518 of 2013 before the Court below on 22-08-2013 and the same was disposed of on 23-10-2015 granting *interim* maintenance @ Rs.50,000/- per month from the date of filing the petition *i.e.* 22-08-2013 till disposal of the O.P. As discussed hereinabove, the respondent joined in service in the month of April, 2014, and is earning Rs.1,20,000/- per month. Therefore, the respondent is entitled to claim *interim* maintenance from the date of the petition till her joining in service *i.e.* from 22-08-2013 till March, 2014 only at the rate fixed by the Court below. Hence, the impugned order is modified awarding *interim* maintenance to the respondent from 22-08-2013 till March, 2014 @ Rs.50,000/- p.m. and declining maintenance *pendente lite* thereafter while sustaining the order of granting legal expenses.

12. The civil revision petition is accordingly partly allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 23-01-2018.

JSK

M.SATYANARAYANA MURTHY, J.