

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.6403 of 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order dated 20.9.2018 passed in I.A.No.894 of 2017 in O.P No.16 of 2017 on the file of the Court of Senior Civil Judge, Nalgonda.

2. The facts leading to filing of the present revision petition are briefly as follows: The petitioner filed O.P. No.16 of 2017 on the file of the Court of Senior Civil Judge, Nalgonda, against the respondent under Section 13 of the Hindu Marriage Act, for dissolution of the marriage between them. During the pendency of the O.P., the respondent filed I.A.No.894 of 2017 under Section 24 of the Hindu Marriage Act, claiming maintenance of Rs.8,000/- per month and legal expenses of Rs.10,000/- from the petitioner. The petitioner filed counter *inter alia* contending that the petitioner is not entitled to claim maintenance. The petitioner further contended that the amount of maintenance claimed by the respondent is on higher side. Basing on the material available on record, the trial Court allowed the petition, directing the petitioner to pay Rs.5,000/- per month towards maintenance from the date of filing of main case i.e., O.P. No.16 of 2017 till its disposal. The petitioner was also directed to pay Rs.5,000/- towards legal expenses. Feeling aggrieved by the order of the trial Court, the petitioner preferred the present revision petition.

3. Learned counsel for the petitioner submitted that the trial Court ought not to have granted maintenance from the date of

filing of O.P. No.16 of 2017. He further submitted that the amount of maintenance awarded by the trial Court is on higher side; hence, it is a fit case to allow the revision petition. ***Per contra***, learned counsel for the respondent submitted that the trial Court, after considering the financial status of both the parties, granted maintenance; therefore, it is not a fit case to interfere with the impugned order.

4. The point that arises for consideration in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the impugned order, warranting interference of this Court?

5. The marriage of the petitioner was performed with the respondent, as per Hindu rites and caste customs. Out of lawful wedlock, the petitioner and the respondent were blessed with three children, aged about 5 years, 4 years and 2 years respectively. For one reason or the other, disputes arose between the petitioner and the respondent; therefore, the respondent has been residing at her parents' house along with the children.

6. A perusal of the record reveals that the petitioner has been working as postman. As per the pay-slip, he is getting gross salary of Rs.10,365/- per month. It is the case of the petitioner that he has to look after the welfare of his mother. There is a social and moral obligation on the part of the petitioner to provide reasonable amount towards maintenance to his wife and children. It is not the case of the petitioner that the respondent is having any source of income. It may not be possible for the respondent to look after the

three children, without any source of income. The trial Court, after taking into consideration the salary of the petitioner and the financial status of the respondent, granted an amount of Rs.5,00/- per month towards maintenance. An amount of Rs.5,000/- is hardly sufficient for sustenance of four persons. Viewed from any angle, I am unable to accede to the contention of learned counsel for the petitioner that granting of maintenance at Rs.5,000/- per month is on higher side. The trial Court also granted an amount of Rs.5,000/- to the respondent towards legal expenses. The trial has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial Court.

7. The contention of learned counsel for the petitioner is that the trial Court granted maintenance from the date of filing of O.P. No.16 of 2017; therefore, it is liable to be set aside. It is needless to say that the Court may grant maintenance either from the date of filing of the petition seeking maintenance or from the date of the order in the petition. In the instant case, I.A.No.894 of 2017 seeking maintenance was filed on 04.7.2017 and the trial Court allowed the I.A., on 20.9.2018. A perusal of the impugned order clearly reveals that the trial Court granted maintenance, even in the absence of such a prayer in I.A. No.894 of 2017, from the date of filing of O.P. No.16 of 2017. In such circumstances, this Court is of considered view that granting of maintenance from the date of filing of the O.P., is not in accordance with law. The impugned order to that effect is liable to be set aside.

8. In the result, the civil revision petition is allowed in part, setting aside the order dated 20.9.2018 passed in I.A.No.894 of 2017 in O.P No.16 of 2017 on the file of the Court of Senior Civil Judge, Nalgonda, to the extent of granting maintenance from the date of filing of O.P. No.16 of 2017. Consequently, I.A.No.894 of 2017 is allowed granting maintenance of Rs.5,000/- per month to the respondent herein from the date of filing of I.A.No.894 2017. The respondent is also entitled for legal expenses of Rs.5,000/-. No order as to costs. Miscellaneous petitions, if any pending in this revision shall stand closed.

Date: 23.11.2018
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T.SUNIL CHOWDARY, J

