

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.7527 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order in I.A.No.115 of 2017 in O.P.No.54 of 2017 passed by the Senior Civil Judge, Dharmavaram, granting interim maintenance of Rs.5,000/- to the petitioner besides legal expense of Rs.10,000/-.

The Order dt.19.12.2018 is challenged by the petitioner herein/husband before this Court on the ground that there is no basis for arriving that the respondent herein is entitled for interim maintenance of Rs.5,000/- when she herself deserted the petitioner. Moreover, in the absence of any proof that the petitioner herein is earning income, the order is unsustainable.

It is the case of the petitioner herein before the trial Court that he was drawing Rs.25,126/- as salary after deducting an amount of Rs.8,220/- and his net pay was Rs.16,906. But, the trial Court erroneously granted interim maintenance as stated above and requested this Court to set aside the Order passed by the trial Court.

It is not in dispute the relationship between the petitioner and respondent as husband and wife. It is not the case of the petitioner herein that the respondent herein has got an independent source of income to meet her necessities and whereas the petitioner is working as an employee and this fact is substantiated by the petitioner by producing salary certificate for the month of June, 2018 to establish that he was drawing gross salary of Rs.25,126/- . When the respondent did not possess any independent means to meet her necessities, the petitioner/wife is entitled to claim maintenance during pendency of the

main petition filed for different relies under the Hindu Marriage Act. Taking into consideration the income of the petitioner herein and the respondent, the Court shall pass an Order awarding interim maintenance. Though the petitioner produced salary certificate to establish that he was drawing gross salary of Rs.25,126/-, the trial Court awarded interim maintenance of Rs.5,000/- per month and it is inconsonance with the law laid down by the Apex Court in *Dr. Kulbhushan Kumar v Smt Raj Kumari and another*¹ and *Kalyan De Chowdhury v Rita Dey Chowdhury Nee Nandy*².

By applying the principles laid down in the above two judgments, wife is entitled to claim 1/4th of the maintenance amount during pendency of the petition. Therefore, the findings arrived by the trial Court cannot be interfered with since I do not find any illegality or irregularity in the Order passed by the trial Court. However, the trial Court is directed to dispose of O.P.No.54 of 2017, as expeditiously as possible, but not later than three months, from the date of receipt of a copy of this Court.. Further, the petitioner herein/husband is directed to pay the arrears of the amount, if any, within a period of two months from today.

Accordingly, this Civil Revision Petition is disposed of.

M. SATYANARAYANA MURTHY, J

Date: 21-12-2018
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¹ AIR 1970 SC 234
² AIR 2017 SC 2383

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