

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.6939 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.3 of 2017 in HMOP No.33 of 2016 dated 27.07.2017 passed by the Senior Civil Judge, Sompeta.

It is the contention of the respondent/wife before the Trial Court that, she is a house wife and whereas, the petitioner is working as a Software Engineer in private organization, earning salary of Rs.80,000/-, besides receiving Rs.3,00,000/- from the landed properties. Since, the respondent had no capacity to maintain herself from any independent source she sought to grant Rs.20,000/- towards her maintenance, besides Rs.20,000/- per month towards litigation expenses and a sum of Rs.10,000/- per month towards the maintenance of her son. Whereas, the petitioner/husband filed counter denying material allegations.

The petitioner/husband before the Trial Court denied drawing or earning salary of Rs.80,000/-, besides receipt of Rs.3,00,000/- from the landed properties. The petitioner admitted that he is earning salary of Rs.50,000/- per month and therefore, he is not under obligation to pay the respondent and requested to dismiss the petition.

Upon hearing argument of both the counsel, the Trial Court ordered the petitioner/husband to pay Rs.10,000/- to the respondent/wife and Rs.8,000/- towards maintenance of her son,

without awarding any litigation expenses. Aggrieved by the said order, the present civil revision petition is filed.

During hearing, learned counsel for the petitioner contended that, when the petitioner is working in a private organization at Bangalore, he has to incur certain incidental expenses for him and the salary of Rs.50,000/- which he is drawing is not sufficient to meet the expenses. Therefore, requested to reduce to maintenance atleast by 50% of the awarded amount and requested to pass appropriate orders.

None appeared on behalf of the respondent and no argument is advanced.

Section 24 of Hindu Marriage Act deals with Maintenance *pendente lite* and expenses of proceedings and according to it, 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.

Thus, it means that the wife or husband is entitled to claim maintenance *pendente lite*, under Section 24 of Hindu Marriage Act, besides litigation expenses, and while passing an order, the Court has to take into consideration the income of both the parties and award appropriate amount as maintenance *pendente lite*. In

the present case on hand, the respondent/wife pleaded that she has no source to maintain herself and that the petitioner is also not providing any amount for maintenance and litigation expenses, though he is working in a private organization by earning sufficiently, besides receiving income from landed property.

But, the petitioner/husband denied the said factum of earning salary of Rs.80,000/-, besides receiving Rs.3,00,000/- from the landed properties. In such case, the burden is upon the respondent/wife to prove that the petitioner possessed and owned any immovable property and receiving any amount from the properties owned by him. Moreover, the petitioner/husband before the Trial Court in paragraph no.5 of the counter admitted that he is working in a private organization and getting only Rs.50,000/- per month as take home salary and he has to look after his aged parents. Thus, the judicial admission made by him is sufficient to conclude that this petitioner/husband is earning Rs.50,000/-.

In **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy**¹, the Apex Court while following the judgment of Apex Court in **Dr. Kulbhushan Kumar v. Raj Kumari and another**², where it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the Court would be justified in moulding the claim for maintenance passed on various factors.

¹ 2017 (5) SCALE 5

² (1970) 3 SCC 129

Therefore, awarding maintenance of Rs.10,000/- per month in favour of the respondent/wife which is less than 1/4th of the salary of the petitioner is in accordance with law. Sofaras, Rs.8,000/- per month is maintenance awarded to her son is excessive and the same is reduced to Rs.5,000/- per month. Further, taking into consideration of the necessities, including medical, education expenses, food & shelter, the amount awarded by the Trial Court to the wife cannot be disturbed and the maintenance awarded to the son is reduced to Rs.5,000/- per month.

With the above modification, the civil revision petition is disposed of.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:14.11.2018

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