

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD****CIVIL REVISION PETITION No.7000 of 2017****ORDER:**

This Civil Revision Petition is arising out of the Order dt. 28.04.2015 in I.A.No.22 of 2013 in MOP No.114 of 2012 passed by Additional Senior Civil Judge, Srikakulam.

The Revision Petitioner is the respondent against whom I.A.No.22 of 2013 in MOP No.114 of 2012, has been filed under Section 24 of the Hindu Marriage Act, for grant of interim maintenance of Rs.20,000/- and towards litigation expenses of Rs.5000/-.

The trial Court, on consideration of the material before it, granted interim maintenance of Rs.2000/- per month to the wife/respondent herein till the disposal of MOP No.114 of 2012 from the date of petition and Rs.2,000/- towards litigation expenses.

Aggrieved by the impugned Order, this Revision Petition is before this Court.

The parties are arrayed as petitioner and respondent as they were arrayed in the petition before the trial Court.

The brief facts of the case are that the petitioner is the legally wedded wife of the respondent. She filed I.A.No.22 of 2013 in MOP No.114 of 2012 under Section 24 of Hindu Marriage Act, for grant of maintenance of Rs.20,000/- per month stating that she has no means to maintain herself and her parents, who are suffering with old aged ailments. She further stated that the respondent is having sufficient means to pay interim maintenance to her as he is doing gold business and earning Rs.60,000/- per month.

The respondent/husband has filed Counter admitting the relationship between the petitioner and respondent and filing of HMOP No.132 of 2014 by the petitioner seeking restitution of conjugal rights. He has also stated about filing of DVC No.33 of 2013 and M.C.No.46 of 2012 by the petitioner. The respondent further states that the petitioner had voluntarily left the society of the respondent without any reasonable cause and he came to know that she developed illicit intimacy with one Siva, who was working as booking clerk at Sri Ramanjaneya Theatre, Panastalam. The respondent had denied that he was doing pawn broker business or money lending business and getting Rs.60,000/- per month as income, that he was doing business in a rented shop, and getting meagre income. The petitioner is having sufficient means to maintain herself and therefore, sought for dismissal of the petition.

The trial Court, on consideration of the material on record, has granted interim maintenance of Rs.2000/- per month and litigation expenses of Rs.2000/-.

Heard arguments of learned counsel for the petitioner and the respondent.

The point for consideration in this matter is:

*“ Whether the interim maintenance granted under Section 24 of Hindu Marriage Act at Rs.2,000/- per month and litigation expenses of Rs.2,000/- is excessive and beyond the means of the respondent/revision petitioner?*

POINT: Learned counsel for the revision petitioner/respondent mainly contended that the trial Court has not considered the documents filed by the respondent in respect of his business and presumed the income of the respondent on higher side without there being any basis. The trial Court, without assigning any reason for not

placing reliance on the public documents, filed by the respondent, has granted maintenance of Rs.2000/- per month and in support of his contention, the learned counsel for the petitioner placed reliance on the following judgments:

i) *Jaiminiben Hirenbhavi VyAs and another v Hirenbhai Rameshchandra Vyas*<sup>1</sup>, *Pentakota Surya Appa Rao v Pentakota Seethayamma*<sup>2</sup>, *Manish Jain v Akanksha Jain*<sup>3</sup> and *Neeta Rakesh Jain v Rakesh Jeetmal Jain*<sup>4</sup>

Learned counsel for the revision petitioner/respondent while placing reliance on para No.5 of the Judgment reported in *Jaiminiben Hirenbhavi's* case, wherein the Apex Court held as follows:

“354 (6) Language and contents of judgment - Every order under [Section 117](#) or sub-section (2) of [Section 138](#) and every final order made under [Section 125](#), [Section 145](#) or [Section 147](#) shall contain the point or points for determination, the decision thereon and the reasons for the decision.” Therefore, every final order under [Section 125](#) of the Cr.P.C. [and other sections referred to in sub-section (c) of [Section 354](#)] must contain points for determination, the decision thereon and the reasons for such decision. In other words, [Section 125](#) and [Section 354](#) (6) must be read together.

7. [Section 125](#) of the Cr.P.C., therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per [Section 354](#) (6) of the Cr.P.C., the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case” .

contended that the Court has to grant maintenance either from the date of order or date of application in matters of maintenance, but the trial Court granted maintenance from the date of petition without giving any reason, which is not in accordance with law.

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<sup>1</sup> (2015) 2 SCC 385

<sup>2</sup> 1975 Law Suit (AP) 68

<sup>3</sup> AIR 2017 SC 1640

<sup>4</sup> AIR 2010 SC 3540

In the light of the facts of this case, the Order of the trial Court granting maintenance from the date of petition does not appear to be unreasonable. The above paragraph clinchingly shows that the Court can grant maintenance by giving reasons. In the instant case, the respondent herein/wife is said to be not having any income and therefore, the trial Court has granted maintenance from the date of filing of the petition by giving reasons.

Learned counsel for the revision petitioner further submitted that the public documents produced before the Court have to be taken into consideration, but the trial Court without considering the income tax returns filed by the revision petitioner, has assumed that he is having more income and granted interim maintenance of Rs.2,000/- per month and placed reliance on para No.43 of the judgment reported in *Pentakota Surya Appa Rao's case*, which reads as under:

“But the question decided by the lower court does not stop with this. Income-tax records as and from April 1, 1964, are admissible. But, can they be proved through the evidence of P. W. 1 ? Sri Sarma contends that they are all public documents within the meaning of Section 74 of the Evidence Act as they come within the scope of Sub-section (1), Clause (iii), of that section. These income-tax records, originals of which have been produced by the income-tax department, are certainly public documents within the meaning of Section 74 since they are documents forming the acts of public officers who discharge executive functions by imposing and collecting tax. One of us (Sambasiva Rao, Actg. C. J.) held in *Vijaya Kumar Machinery & Electrical Stores v. Alaparathi Lakshmikanthamma*, , that the income-tax returns are public documents. Since they are originals themselves of public documents, they require no further proof. For this reason, we uphold the decision of the trial court to the extent stated above, i.e., for the period after April 1, 1964, and dismiss the civil revision petition to that extent alone. In view of the fact that the law had been in an uncertain condition in this State so far, we direct the parties to bear their own costs of the revision petition”.

As far as this contention is concerned, the trial Court has taken into consideration the income of the petitioner as Rs.27,000/- to Rs.30,000/- basing on the income tax returns produced by the petitioner. The trial Court has also taken into consideration the fact that the respondent was a gold smith by profession and he was also running a gold shop and therefore the trial Court has taken into consideration the

notional income of the petitioner as Rs.3000/- per month, which is not unreasonable assessment by the trial Court. It is also observed by the trial Court that the petitioner is also having other income than the income he shown in the income tax returns. Nodoubt, the learned counsel for the petitioner has placed reliance on two more judgments reported in the case of *Manish Jain's case* and *Neeta Rakesh Jain's case*.

In *Manish Jain's case* (3 supra), the Apex Court held in para Nos.14 and 15 as under:

“14. Section 24 of the HM Act empowers the Court in any proceeding under the Act, if 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of [Section 24](#) of the Act is “Maintenance *pendente lite* and expenses of proceedings”. The Section, however, does not use the word “maintenance”; but the word “support” can be interpreted to mean as [Section 24](#) is intended to provide for maintenance *pendente lite*”.

15. An order for maintenance *pendente lite* or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.”

The purport of the Judgment is that under Section 24 of Hindu Marriage Act, the Court is empowered to grant interim maintenance if the respondent has no independent income sufficient for her to maintain and also to meet necessary expenses of the proceedings. It was clearly held by the Apex Court that “ maintenance *pendente lite* and expenses of the proceedings” under Section 24 of the Act means the word

‘maintenance’ was used as word ‘support’. Section 24 of the Act is intended to provide for maintenance *pendente lite*.

In another decision reported in the case of *Neeta Rakesh Jain* (4 supra), the Apex Court held in para No.8 of the Judgment as under:

“Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which Section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the Section provides guideline inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income. In other words, in the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute.”

In the above judgments, the provision under Section 24 of the Hindu Marriage Act has been explained. It is observed that since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has to take all the relevant factors into account and arrive at proper amount having regard to the factors which are mentioned in the statute.

The decision cited by the learned counsel for the petitioner is more apt and applicable to the facts of the present case where the interim maintenance was granted under Section 24 of the Hindu Marriage Act by the trial Court. The trial Court has taken care in considering the documents placed before it on economical dependency and came to appropriate conclusion.

A roving enquiry into the income of the petitioner need not be taken up in a petition filed under Section 24 of Hindu Marriage Act as the order for interim maintenance was only of a temporary nature and a detailed and elaborate exercise by the trial Court is not necessary. Therefore, the trial Court has appropriately dealt with this matter and it does not require any interference by this Court.

It is pertinent to note that there are allegations to the effect that wife was driven out of the house and she has also filed DVC No.33 of 2013 and M.C.No.46 of 2012. She has also filed a case under Section 498-A IPC, which was registered as a case in Cr.No.149 of 2012 pending on the file of Judicial Magistrate of First Class, Sirkakulam. She has also filed MOP No.132 of 2014 for restitution of conjugal rights. Therefore, the respondent has to proceed with all these matters and she requires money to meet legal expenses. The husband has filed the present MOP No.114 of 2012 for divorce and in the said OP, she filed the present petition under Section 24 of Hindu Marriage Act for grant of maintenance of Rs.20,000/- per month and on consideration of the material, the trial Court has granted Rs.2,000/- per month and, which is very reasonable and does not require any interference by this Court. Therefore, I do not see any error in the order passed by the trial Court granting interim maintenance of Rs.2000/- per month and also litigation expenses of Rs.2000/-.

It is brought to the notice of this Court by the learned counsel for the respondent herein/wife that the maintenance granted by the trial Court has not been paid by the revision petitioner/husband right from the date of petition and there are arrears of payment of Rs.1,20,000/-.

Learned counsel for the revision petitioner/husband submitted that all the cases filed by the wife are pending before various Courts and

the wife is not cooperating for disposal of those cases and sought for a direction for early disposal of those cases. However, in view of the facts and circumstances of the case, the Courts below, wherein the cases are pending between the petitioner and the respondent, may expedite the trial of those cases and both parties are directed to cooperate for disposal of those cases.

In the result, this Civil Revision Petition is dismissed confirming the Order dt. 28.04.2015 in I.A.No.22 of 2013 in MOP No.114 of 2012 on the file of Additional Senior Civil Judge, Srikakulam.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

Date: 09-03-2018  
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**GUDISEVA SHYAM PRASAD, J**



**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**



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