

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.242 of 2019

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.19-12-2018 in I.A.No.1192 of 2017 in O.P.No.475 of 2015 of the I Additional Family Court at Hyderabad.

2. The said O.P. was filed by petitioner against respondent under Section 12 of the Hindu Marriage Act, 1955 (for short “the Act”) for annulment of his marriage with the respondent which was solemnized on 13-12-2014. He alleged in the said O.P. that the respondent suppressed from him (a) the fact that she had extra marital affairs during her first marriage to one Arvind Chenji; (b) her disinclination/physical inability to consummate the marriage; (c) that her children from the first marriage were majors and she informed petitioner that they were minors and dependent on her; and (d) the fact that she had affiliation with Divya Shiva Yog, a Spiritual organization. He also contended that she willfully misled him that she had forgiven her former husband for bigamy when in fact she had filed false criminal cases against her first husband; that the above acts amount to fraud; and so the marriage between the parties has to be annulled by granting a decree of nullity.

3. It is not in dispute that the petitioner was a widower at the time of the said marriage; and that the marriage between the respondent and her first husband was dissolved by a decree of divorce granted on

28-06-2005 in O.P.No.847 of 2007 of the Family Court, Hyderabad; that respondent filed FCA No.109 of 2007 which was withdrawn by her on 2.9.2016 only.

Respondent's case in I.A.No.1192 of 2017

4. The respondent filed I.A.No.1192 of 2017 in the said O.P. under Section 24 of the Act to direct the petitioner to pay Rs.75,000/- p.m. towards interim maintenance and legal expenses of Rs.50,000/-, pending disposal of the O.P.

5. In the affidavit filed in support of the said application, she stated that she was the legally wedded wife of petitioner and that at the time of her marriage, she was a divorcee with two major children and that petitioner was widower with a married daughter from his deceased first wife, who was settled in U.S.A. She admitted that her former husband's divorce petition was allowed only on 28-06-2005.

6. She alleged that petitioner threw her out of the house in May, 2015 and she lodged a criminal case against petitioner under Section 498-A I.P.C. in Banjara Hills P.S. She contended that she was residing with her old father at Tarnaka initially and later she shifted to Warisguda in one of the rented flats and was paying Rs.12,500/- p.m. as rent. She contended that her father gets only pension of Rs.20,000/- p.m. and he also has old age related problems and she cannot depend on her brothers, who have their own families to look after. She also contended that M.C.No.152 of 2015 filed by her

against petitioner was dismissed on 07-08-2017, but Crl. Revision No.2587 of 2017 was pending adjudication.

7. She contended that she had no independent regular source of income and she cannot depend on her father and brothers, that she had to mortgage her flat for her livelihood and to fight cases filed by petitioner and she is also suffering with health issues due to mental trauma caused by petitioner.

8. She stated that petitioner is a retired Major and gets pension of more than Rs.75,000/- p.m. and he is also working as a Director of Emergent Methodology (NIIT) and drawing a monthly income of Rs.3,00,000/- from different sources. According to her, the petitioner also received compensation of Rs.10.00 crores from Fortis Hospital, Bangalore for the death of his first wife during treatment for kidney failure. She further alleged that petitioner has properties worth crores of rupees in Rajasthan; that the petitioner enrolled himself in a Matrimonial website and in his profile, he stated that he was earning Rs.25 to 30 lakhs per annum. She also stated that petitioner leads a luxurious life, maintains 2 drivers, 2 maid servants, a dog and spends about Rs.25,000/- p.m. on them apart from house rent of Rs.40,000/-.

Petitioner's stand in the counter in I.A.No.1192 of 2017

9. Counter-affidavit was filed by petitioner opposing application for interim maintenance.

10. He contended that the application was filed with a *mala fide* intention of extracting money from him, and with a view to prolong the O.P. and it should be dismissed in *limini*. He alleged that petitioner did not give copy of the decree of her divorce so that their marriage could be registered with the Registrar of Marriages and was making excuses that she mislaid it and it was not readily available. He contended that later she gave him a photocopy of the same; that in the said order, he saw that her first husband filed the O.P.No.847 of 2000 against her and not vice-versa; she also suppressed the fact that she filed F.C.A.No.109 of 2007 before this Court challenging the said decree; and the appeal was pending before the High Court. He contended that had he known about the pendency of the appeal, he would not have consented for the marriage.

11. He contended that she filed M.C.No.152 of 2015 claiming maintenance from him and though initially interim maintenance was granted, ultimately it was dismissed on 07-08-2017 holding that the marriage itself was null and void, though a Criminal Revision Petition was preferred by her and it was pending in this Court.

12. He alleged that in view of the embargo put by Section 15 of the Act, respondent had committed bigamy by marrying him before her divorce decree attained finality and he had filed Cr.No.353/2017 before the Banjara Hills P.S. against the respondent.

13. He also alleged that respondent filed D.V.C.No.170/2015 against him claiming Rs.50,00,000/-, Cr.No.272/2016 dt.06-05-2016

before the Chilakalguda P.S. under Section 498-A I.P.C., and another case under Section 498-A I.P.C. wherein charge sheet was filed against him, but the trial was stayed in Crl. Revision Petition No.192 of 2017.

14. He alleged that respondent suppressed that she was gainfully employed as a Model Coordinator as per her statement in F.C.A.No.109 of 2007 cause title; that she is not a house-wife without any source of income as claimed by her, but she has her own house and is getting rentals from it. He alleged that she is maintaining a car and is financially well placed having different sources of income. He therefore contended that no interim maintenance should be granted to respondent as their marriage itself was a nullity.

Order dt.19-12-2018 in I.A.No.1192 of 2017

15. By order dt.19-12-2018, the Court below awarded interim maintenance of Rs.20,000/- p.m. from the date of petition i.e. 13-11-2017 and legal expenses of Rs.20,000/-. Time was granted to the petitioner to pay arrears of maintenance in 3 equal monthly installments commencing from January, 2019 and he was directed to pay interim maintenance on or before 10th of every succeeding calendar month into the Bank account of respondent.

16. After considering the contentions of the parties, the Court below noted that after filing of O.P. under Section 12(1) of the Act on 20-04-2015, petitioner had filed I.A.No.566 of 2016 under Order VI

Rule 17 C.P.C. to incorporate para-8A in the O.P. and that it was allowed on 15-12-2016; and I.A.No.1230 of 2017 was also filed by petitioner under Order VI Rule 17 C.P.C. seeking to incorporate Section of law as 'Section 11 of the Act' in the place of 'Section 12 of the Act', which is pending. It also noted that petitioner had filed I.A.No.50 of 2018 under Order I Rule 10 C.P.C. to implead the first husband of respondent and the lady, the first husband of the respondent, had married after obtaining divorce from the respondent.

17. It considered the contention of the petitioner that M.C.No.152 of 2015 by the Additional Family Court, Nampally, Hyderabad was dismissed taking a view that the marriage itself is null and void in view of Section 15 of the Act, and observed that the said finding has not attained finality in view of pendency of Crl.R.C.No.2587 of 2017 against the order in the M.C.; and so, the finding recorded in the said M.C. would not bind the Court below.

18. It then referred to the plea of petitioner that respondent has suppressed the factum of pendency of F.C.A.No.109 of 2007 filed by petitioner against the respondent and the judgment dt.28-05-2005 of the Family Court, Hyderabad granting divorce between respondent and her former husband, and had married the petitioner during subsistence of the said F.C.A. and therefore the marriage between the petitioner and respondent which occurred on 13-12-2014 is null and void. It, however, declined to go into the said issue in I.A.No.1192 of 2017 and stated that it would consider the same in the main O.P. after

full fledged enquiry. It then observed that since there was an admission between the marriage between petitioner and respondent on 13-12-2014, the respondent is entitled to invoke Section 24 of the Act to provide her immediate relief, if she was unable to support herself.

19. After referring to the several decisions cited by both sides before it, the Court below observed that these would be considered at the time of disposal of the main O.P., and would not be considered while considering I.A.No.1192 of 2017 filed under Section 24 of the Act.

20. Though petitioner sought to place reliance on the statement made in F.C.A.No.109 of 2007 by respondent that she was a Model Coordinator, the Court held that the said recital related to the year 2007 and it would look into the present situation. It observed that presently the respondent had no source of income or employment and petitioner did not file any document to *prima facie* show that respondent has independent source of income. It noted the statement of respondent that she had mortgaged her flat and she has also a car, but it observed that respondent requires amount for maintenance, and since petitioner is a retired Indian Army Officer in the cadre of Major and receiving pension, and since petitioner did not deny that he was receiving pension of more than Rs.75,000/- p.m. in his counter-affidavit, it is a fit case to grant Rs.20,000/- p.m. to respondent towards maintenance from the date of petition and legal expenses of Rs.25,000/-.

21. Assailing the same, this Revision is filed.

THE PRESENT REVISION

22. The party-in-person/petitioner vehemently contended that respondent is not his wife and he is not her husband and Section 24 of the Act is not attracted in view of the absence of marital relationship between the parties. He contended that respondent's claim to be his wife has to be discredited in view of Section 15, Section 5(i) and Section 11 of the Act and the order passed on 02-09-2016 in F.C.A.No.109 of 2007. He contended that effective date of divorce between the respondent and her former husband can only be 02-09-2016 when F.C.A.No.109 of 2007 was dismissed confirming the order dt.28-06-2005 in O.P.No.847 of 2007 and since the respondent was the wife of her former husband till 02-09-2016, the marriage dt.13-12-2014 has to be treated as farcical, and the respondent should be held to have tricked him by concealing real facts about F.C.A.No.109 of 2007. He denied that he got Rs.10.00 crores from Fortis Hospital, but stated that he received only Rs.1.99 crores. He also denied that he gets a pension from Indian Army and contended that respondent has to prove the same. He therefore contended the respondent is disentitled to claim interim maintenance.

23. The petitioner also placed reliance on dismissal of M.C.No.152 of 2015 and the finding recorded therein that the marriage between himself and respondent is null and void in view of Section 15 of the Act. He blamed the Court below for not determining the issue

whether the respondent has the status of his wife and alleged that it could not have awarded interim maintenance when she is not his wife legally. He also relied on several decisions.

24. Sri V.B. Gopala Krishna, learned counsel appearing for respondent refuted the said contentions.

25. Firstly, he contended that the status of a wife has to be adjudicated by the trial Court after marshalling the evidence and documents filed by both parties in the O.P. and it cannot be decided in the I.A.

26. Alternatively, he referred to Section 15 of the Act and contended that the object of Section 15 of the Act is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure that the said appeal is not frustrated; that the purpose of Section 15 of C.P.C. is to avert complications that would arise due to a second marriage during pendency of the appeal, in case a decree of dissolution of marriage is reversed; and that the protection which is afforded by Section 15 of the Act is primarily to a person who is contesting the decree of divorce; and the restriction placed on a second marriage in Section 15 of the Act till the dismissal of an appeal would not apply to a case where parties have settled and decided not to pursue the appeal.

27. It was contended that respondent had entered into a settlement with her former husband and withdrawn F.C.A.No.109 of 2017 apart

from criminal case initiated by her on 04-10-2012 itself and therefore the respondent should be deemed to have divorced her former husband in 2005 itself. He relied on the decision of the Supreme Court in **Anurag Mittal Vs. Shaily Mishra Mittal**¹ in support of the said contention.

28. He contended that respondent was the legally wedded wife of the petitioner having married him on 13-12-2014 and even the petitioner in his pleadings in para-3 of the O.P. stated that petitioner and respondent had cohabitated together as husband and wife.

29. He contended that the order in M.C.No.152 of 2015 is erroneous and in any event it has not attained finality because Crl.R.C.No.2587 of 2017 is pending and any finding recorded therein would not bind the Family Court.

30. The contents of I.A.No.1192 of 2017 are reiterated and the order passed therein is supported by the learned counsel for respondent.

31. Learned counsel for respondent alleged that petitioner had obtained Rs.10.00 crores from the Fortis hospital for causing death of his wife and he suppressed his marriage with the respondent in that litigation since he intended to claim more compensation from the said hospital for loss of conjugal rights and companionship and even avoided to get their marriage registered intentionally.

¹ (2018) 9 SCC 691

32. Both parties have cited several decisions and invited this Court to express opinion on the existence of marital relationship between the parties.

THE CONSIDERATION BY THE COURT

33. I have noted the contentions of both sides.

34. From the facts narrated above, it is clear that respondent had filed O.P.No.475 of 2015 before the Additional Family Court, Hyderabad under Section 12 of the Act seeking a declaration that his marriage with respondent be annulled by a decree of nullity.

35. The question which both parties addressed is:

“whether there was a subsisting marriage between respondent and her former husband till 02-09-2016, though there was decree of divorce granted on 28-06-2005 in O.P.No.847 of 2000 which was subject matter of F.C.A.No.109 of 2007 before this Court till the said appeal was dismissed on 02-09-2016 was withdrawn by respondent?”

36. In my opinion, any expression of opinion thereon by this Court in this Revision would prejudice the rights of the parties in the O.P. and is not desirable. Therefore, this Court also declines the invitation of both parties to go into the above question and approves the view of the trial Court that the said issue is required to be gone into in the O.P.

37. Since the petitioner himself has stated in para-1 of his O.P. that there was a marriage solemnized between himself and respondent on 13-12-2014 and also stated in para-3 that the petitioner and respondent

had cohabitated together as husband and wife, for the sake of deciding I.A.No.1192 of 2017, the Court below was right in proceeding that there is a *prima facie* marital tie between the parties. However, this does not mean that the said opinion is final and taking such a view in the I.A., would not preclude the Court below from taking appropriate decision on the said issue in the O.P.

38. The Court below had rightly not expressed any opinion even *prima facie* on the question whether there was suppression by the respondent about the pendency of F.C.A. No.109 of 2007 while marrying the petitioner or about the validity of the marriage between the parties. Had such a view been expressed by it, the party aggrieved by such a view would not keep quiet and might even seek transfer of the O.P. to a different Court and also lodge a complaint against the President Officer for pre-judging the issue. Therefore, I am of the opinion that the Court below rightly did not enter the said arena and express any opinion on the said issue.

39. For the first time in this Court, the petitioner raised a plea that he is not drawing any pension on account of his retirement from the Indian Army. Why he did not take such a plea in his counter affidavit in the Court below is not explained by the petitioner. Without any such plea, he cannot now deny that he does not receive pension.

40. He did not deny that he is an Income Tax assessee and was filing returns with the Income Tax Department as regards the income he is obtaining from different sources. But he has not chosen to file

this material before the trial Court or before this Court. Suppression of the said relevant material would lead to an adverse inference being drawn against the petitioner that he has sufficient means to provide interim maintenance and legal expenses to the respondent.

41. The petitioner has not been able to show that respondent has any source of income as on the date of filing of the I.A.No.1192 of 2017.

42. The mortgage deed dt.4.5.2015 filed by the petitioner, after this case was reserved for arguments, only shows that respondent mortgaged her apartment then for Rs.6,00,000/-, but this does not mean that she has income. Also she needs to repay the loan covered by the mortgage.

43. The Court below had only granted Rs.20,000/- p.m. as interim maintenance to the respondent as against a claim of Rs.75,000/- made by her and awarded only Rs.20,000/- towards legal expenses as against Rs.50,000/- claimed by respondent for the said purpose pending O.P. These amounts cannot be said to be exorbitant keeping in view the status of the parties.

44. I therefore do not find any error of jurisdiction in the order passed by the Court warranting interference by this Court under Article 227 of the Constitution of India.

45. Accordingly, the Civil Revision Petition fails and it is dismissed. No costs.

46. The Court below is directed to decide the O.P. uninfluenced by any opinion expressed by it in its order in its order dt.19-12-2018 in I.A.No.1192 of 2017 in O.P.No.475 of 2015 or by this Court in this order.

47. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-03-2019

Vsv/-

