

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.436 OF 2019

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08.11.2018 in I.A.No.874 of 2016 in OP.No.1877 of 2015 on the file of the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge-cum-Additional Family Court at Malkajgiri.

2. Petitioner is the husband of the respondent. They have two children aged 9 years and 4 years, respectively. The respondent is a house wife.

3. Petitioner filed the said O.P. against the respondent seeking judicial separation from the respondent and the said O.P. has been numbered as OP.No.1877 of 2015 before the above Court.

4. Pending O.P., the respondent filed I.A.No.874 of 2016 under Section 24 of the Hindu Marriage Act, 1955 seeking interim maintenance @ Rs.15,000/- per month for herself and her two children and also legal expenses of Rs.5,000/-.

5. In the affidavit filed in support of the said application, she contended that the petitioner is doing business and earning more than Rs.50,000/- per month and does not have any dependent family members. She also alleged that he is getting rents from the properties but he is not supporting the respondent and the children. She admitted that she was staying in the house of the

respondent and that the petitioner is staying with his parents in another house. She stated that she has no source of income to maintain herself and so the above amounts be granted.

6. By order dt.08.11.2018 the Court below partly allowed the said application awarding Rs.10,000/- per month towards monthly maintenance to the respondent from the date of petition and also Rs.5,000/- towards legal expenses.

7. When the said order was passed, no counter had been filed by the petitioner in the O.P. and there was no denial before the Court below about the requirement of the respondent of the amount sought by her for interim maintenance and legal expenses.

8. Challenging the said order, this Revision is filed.

9. Counsel for the petitioner contended that though counter affidavit of the petitioner was already on record in the I.A., the same had been ignored by the Court below and the impugned order has been passed.

10. In the counter, alleged to have been filed by the petitioner in the I.A., he opposed grant of interim maintenance stating that he is dependent on his father though he was earlier employed in a private company. He alleged that his father is a retired bank employee drawing pension of Rs.1,000/- per month apart from rents from his properties. He contended that he is dependent on

his father for his day-to-day expenses. He alleged that the respondent had treated him cruelly and so he was forced to file the O.P. According to him, his mother is suffering from Cancer and has been undergoing treatment for the previous three months and considerable expenses have also been incurred for it.

11. On the direction of this Court in this Revision, petitioner has also filed Income Tax Returns for the Assessment Years 2016-2017 and 2017-2018, which show a gross total income of Rs.3,21,918/- and Rs.3,44,515/- respectively. But no valid explanation is forthcoming from the petitioner why he did not file Income Tax Returns for the Assessment Years 2018-2019 and 2019-2020.

12. From the facts narrated above, it is clear that the respondent is unemployed and she has to manage two children aged 9 years and 4 years and also get them educated. Merely because she is staying in the house belonging to the petitioner, petitioner cannot refuse to pay interim maintenance or legal expenses to her. When the petitioner is aged 33 years, he cannot claim to be dependent on his father, particularly, when income tax returns filed by him for the Assessment Years 2016-2017 and 2017-2018 indicate that he has income.

13. In any event, a sum of Rs.10,000/- towards maintenance every month for the respondent and the two children, in the facts and circumstances of the case, does not appear to be excessive

warranting any interference by this Court in exercise of its power conferred under Article 227 of the Constitution of India.

14. I therefore do not find any merit in this Civil Revision Petition and it is accordingly dismissed. However, one month time is granted to the petitioner to pay the arrears of maintenance at the rate fixed by the Court below and also to deposit legal expenses awarded by the Court below. Petitioner shall continue to pay the maintenance as directed by the Court below till disposal of the O.P. No order as to costs.

15. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

20th August, 2019.

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