

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1371 of 2018

ORDER :

This Civil Revision Petition is filed challenging the order dt.28.10.2017 passed in I.A.No.418 of 2017 in O.P.No.791 of 2015 on the file of the XVI Additional District and Sessions Judge-cum-III Additional Family Judge, Ranga Reddy District, at Malkajgiri.

2. The respondent filed the said O.P. for restitution of conjugal rights against petitioner who is her husband.

3. In the said O.P., she contended that she gave birth to a child on 12.02.2014, but petitioner never visited her; and for reasons best known to him, avoided her father's calls and his presence; that he left for United States of America without intimating her; and that she is ready to join him and lead a harmonious life.

4. Counter-affidavit was filed in the above O.P. by petitioner opposing the said relief stating that he had no objection if the respondent joins his company along with the child. He stated that respondent, having issued a legal notice on 27.04.2015, calling upon him to join her company, unnecessarily filed the O.P. for restitution of conjugal rights. He denied the allegations leveled against him by respondent. He claimed that when the child was born, he and his relatives were insulted by respondent and her parents. He also alleged that respondent wanted him to disown his parents and take up a job in Hyderabad, leaving behind his people. He also contended that the

respondent filed M.C.No.136 of 2015 seeking maintenance, and he had filed a counter therein that she is welcome to join his company, and she is not entitled to maintenance.

5. While the O.P. was pending, the respondent filed I.A.No.418 of 2017 to withdraw the O.P. filed by her setting out several reasons why she changed her mind regarding seeking relief of restitution of conjugal rights. The petitioner filed a counter opposing the said application and claimed that though he was keen that the respondent should join him, she filed the O.P. and now she is giving pretext to avoid joining his company and had also filed a Criminal Case under Section 498-A of Indian Penal Code in Crime No.580 of 2016 against him and his family members; that it is her strategy to get maintenance from him; and that the present application lacks *bona fides*.

6. By order dt.28.10.2017, the Court below allowed I.A.No.418 of 2017. It also referred to a Memo dt.13.03.2017 filed on behalf of petitioner wherein he sought for allowing the O.P. and closing the M.C.

7. The Court below referred to the contentions of parties and, in particular, the reasons assigned by respondent for changing her mind, and opined that it is for the respondent to decide whether to proceed with the O.P. filed by her for restitution of conjugal rights or not, and she cannot be compelled by petitioner to close the M.C. and come and join with petitioner. It also observed that it is not possible for it to come to a definite conclusion that there are *bona fides* on the part of

petitioner in asking the respondent to come and join with him in United States of America, particularly when the respondent is alleging subsequent cruel attitude on the part of petitioner; and when the respondent had filed a criminal complaint, she also alleged that maintenance amount was not paid to her and her minor son as per the orders of the High Court. It observed that the respondent is the best judge to decide whether to prosecute her case or not, and therefore, it is just and proper to permit respondent not to press the O.P. filed by her for restitution of conjugal rights.

8. Assailing the same, the present Civil Revision Petition is filed.

9. The counsel for petitioner contended that the order passed by the Court below cannot be sustained; that from the beginning the petitioner had been keen that the respondent should join him; that he filed a Memo on 13.03.2017 in M.C.No.136 of 2015 to allow the O.P. as well as the M.C., and as an after-thought, thereafter, the respondent filed I.A.No.418 of 2017 on 23.03.2017 raising false allegations against him; and so, the impugned order be set aside and the O.P. be restored to the file of the Court and allowed.

10. The counsel for respondent supported the order passed by the Court below.

11. Admittedly, the said O.P. was filed by respondent seeking restitution of conjugal rights invoking Section 9 of the Hindu Marriage Act, 1955 against petitioner. No doubt, the allegations

leveled by respondent against him were denied by petitioner in the counter filed by him to the O.P.

12. It is not in dispute that respondent had filed M.C.No.136 of 2015 in the Court below and also a complaint under Section 498-A of Indian Penal Code before the Police Station, Malkajgiri against the petitioner and his relatives. When the respondent had given certain reasons in the affidavit filed in support of I.A.No.418 of 2017 stating the reasons for her change of mind, i.e., to withdraw the O.P., it is not proper to examine the veracity of said reasons. I am of the opinion that the Court below did not commit any error of jurisdiction in permitting her to withdraw the O.P. Therefore, the petitioner cannot compel the respondent to pursue the O.P. against her will if she does not intend to do so, because the Law does not prevent petitioner to file an O.P. for restitution of conjugal rights if the petitioner is interested to get back the respondent.

13. Therefore, I do not find any merit in the Civil Revision Petition, and it is accordingly dismissed. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.04.2019

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