

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1085 of 2019

ORDER:

Heard Smt. Bhaskar Lakshmi for M/s. Bhaskari Advocates for petitioner and Sri A.Satyanandam for respondent.

2. This Revision is filed challenging the order dt.13.03.2019 passed in I.A. No.567 of 2018 in FCOP. No.2142 of 2015 of XV Additional District and Sessions Judge-cum-XV Additional Metropolitan Sessions Judge-cum-II Additional Family Judge, R.R.District, Kukatpally.

3. The petitioner herein filed the said O.P. before the Court below for Restitution of Conjugal rights and later amended it seeking relief for Dissolution of his marriage with the respondent on the ground of cruelty.

4. Both the parties are residing in the United States of America and they are represented by Special Power of Attorney Holders.

I.A. No.567 of 2018 filed by respondent

5. Pending the O.P., I.A. No.567 of 2018 was filed by the respondent against the petitioner under Section 24 of the Hindu Marriage Act, 1955 claiming interim maintenance of Rs.1,00,000/- per month.

6. In the affidavit filed in support of the said application, the respondent contended that the marriage between the parties took place on 11.02.2015; substantial amount was spent towards marriage expenses as per the demand of the petitioner and his parents; a lot of cash, gold jewellery and silver articles were handed over to the petitioner and his parents; that the petitioner threw out the respondent from the

matrimonial home on 02.04.2015; that he did not care to provide maintenance to her; since the respondent is unemployed and is dependent on her poor parents for her education and livelihood she should be granted interim maintenance. She also contended that the petitioner is working as Software Engineer in United States of America drawing US \$ 1,40,000 per annum; that he owns several movable and immovable properties, both in India and America and also gets rents from them; and the parents of the petitioner are not dependent on him and his father gets pension.

The Counter of the Petitioner

7. The petitioner filed counter affidavit opposing these allegations. He alleged that the respondent is currently in USA after graduating with Information and Technology from the University of IIT in Chicago, USA on 12.05.2018 and she is employed in M/s Rang Technologies INC Piscataway New Jersey, USA in the role of Data Analyst. He contended that a Data Analyst employed by the said Company would get annually US \$ 90,000 and respondent is thus living a life of luxury because she is more than qualified than the petitioner. He alleged that only with a view to mint money out of the petitioner and blackmail his Senior Citizen parent, she has filed the said application.

8. It is alleged that the respondent always desired a luxurious life and has falsely alleged that she is only a student though she is employed. He also alleged that she herself submitted documents in United States of America saying that she has funds for her education and for her livelihood in USA. He also alleged that there was initially an *ex parte* divorce decree granted on 28.03.2017 but later it was set aside and the O.P. was restored.

9. He also alleged that the respondent filed counter in the O.P. between January 13, 2016 and April 4, 2016 stating clearly that she is not interested having matrimonial life with the petitioner forcing the petitioner to amend the O.P. and seeking dissolution of marriage in the place of restitution of conjugal rights. He alleged that the respondent avoided appearing in the Court and was again set *ex parte* for a second time and then approached High Court and got the said order also overturn.

10. It is alleged that the application is filed only to extract money from the petitioner. Other allegations levelled by the respondent against the petitioner were also denied.

The Order dt.13.3.2019 of the Court below

11. By order dt.13.03.2019, the Court below allowed the said application and awarded to the respondent interim maintenance of Rs.1,00,000/- per month from the date of filing of the petition and directed the such payment on or before 10th of every month and payment of arrears and maintenance within four months.

12. After referring to the contentions of the parties, the Court below observed that the petitioner filed a document showing that the respondent was selected as a Data Analyst Trainee in which in the column about 'wages' it was mentioned as "unpaid"; and since the respondent is employed only as unpaid trainee and has no individual income of her own living in USA, it is the duty of the petitioner to pay her interim maintenance.

13. Assailing the same this Revision Petition is filed.

The Contentions of the Counsel for the parties

14. The primary contention of the counsel for the petitioner is that the document referred to by the Court below (that the appointment of letter issued by the Rang Technology dt.07.09.2018 showing that the respondent was selected as Data Analyst Trainee, who was not paid wages) is not filed by the petitioner but was filed by the respondent. It was also contended that the respondent avoided to give her Social Security Number as it would then be easy for the petitioner to find out her income particulars. Counsel also pointed out that an application was filed in the Court below to compel the respondent to supply her Social Security Number and it is pending before the Court below.

15. Counsel for the respondent refuted the said contentions and supported the order passed by the Court below.

16. But both the counsel also stated that there was a decree of divorce granted by the Superior Court of New Jersey on 06.03.2017 dissolving the marriage between the parties.

The Consideration by the Court

17. There can be no doubt that if the respondent is gainfully employed with a monthly income/remuneration from her employer M/s Rang Technologies INC Piscataway New Jersey, USA, she would not be entitled to grant of interim maintenance from the petitioner.

18. While the petitioner asserts that the respondent as a Data Analyst would draw a salary of US \$ 90,000 p.a., the respondent says that she is only a Trainee and is not getting any wages.

19. In the considered opinion of this Court, it would be most unusual for an employer in the USA to be able to extract work from a person without paying some remuneration. Normally wages would be paid for work extracted.

20. The document on which the Court below appears to have relied in drawing the presumption that the respondent was unpaid, was not in fact filed by the petitioner but was filed by the respondent. It appears that the Court below was under the misconception that the said document was filed by the petitioner and amounted to an admission by the petitioner that the respondent was not earning anything while employed as a Data Analyst trainee by M/s Rang Technologies INC Piscataway New Jersey, USA.

21. At the insistence of this Court, the counsel for the respondent has supplied to the Court as well as to the counsel for the petitioner, the photocopy of the Card issued by the US Government to the respondent containing the Social Security Number of the respondent which shows that the respondent is living in Chicago in United States of America. It shows that the respondent is permitted to be employed.

22. Therefore I am of the view that an opportunity is required to be given to the petitioner to get evidence showing that the respondent is gainfully employed and is drawing a monthly /weekly remuneration.

23. In this view of the matter, without expressing any opinion on the merits of the claims of either parties, I set aside the impugned order; I.A. No.567 of 2018 in FCOP.No.2142 of 2015 is restored to the file of the Court below to enable the parties to place further evidence regarding the question whether respondent was earning any income as a Trainee in

M/s.Rang Technologies incorporated New Jersey, United States of America or not.

24. Both the parties are permitted to lead fresh evidence in that regard and the Court below shall then pass a fresh order, in accordance with law, within four weeks from the date of receipt of a copy of this order.

25. The documents filed in this Revision by the counsel for the respondent shall form part of the record and shall be transmitted to the Court below for consideration by it.

26. Accordingly, this Revision Petition is disposed of. There shall be no order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-06-2019
LSK