

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1733 and 2634 of 2018

COMMON ORDER:

Since the issue involved in these two Civil Revision Petitions is one and the same, they are being disposed of by this common order.

2. These two Civil Revision Petitions are filed under Article 227 of the Constitution of India aggrieved by the order, dated 08.02.2018, passed in I.A.No.1747 of 2017 in F.C.O.P.No.1836 of 2015 by the Principal Judge, Family Court, at Hyderabad. C.R.P.No.1733 of 2018 is filed by the husband challenging the granting of interim maintenance of Rs.20,000/- per month, whereas C.R.P.No.2634 of 2018 is filed by the wife seeking enhancement of maintenance and for grant of legal expenses.

3. Hereinafter, the parties are referred to as they were arrayed in I.A.No.1747 of 2017 in F.C.O.P No.1836 of 2015. The petitioner is the wife and the respondent is the husband.

4. The respondent/husband filed F.C.O.P. No.1836 of 2015 seeking decree of divorce on the ground of cruelty. The petitioner/wife filed O.P.No.378 of 2016 under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the Act') for maintenance @ Rs.25,000/- per month. Both the matters are pending before the Court below. During pendency of F.C.O.P.No.1836 of 2015, the petitioner/wife filed I.A.No.1747 of 2017 under Section 24 of the Hindu Marriage Act, 1955 (for short 'H.M.Act') seeking interim maintenance @ Rs.40,000/- per

month. The Court below, after taking into consideration the facts and circumstances of the case and the income of the respondent/husband, granted an amount of Rs.20,000/- per month towards interim maintenance from the date of filing of the petition.

5. Heard the learned counsel for both sides and perused the record.

6. Learned counsel for the petitioner/wife would submit that now-a-days the cost of living is very high. The petitioner/wife needs money to meet the legal and other expenses and that grant of maintenance shall be in terms of Section 24 of the HM Act but not under Section 18 of the Act. The Court below ought to have granted maintenance @ Rs.25,000/- per month and also legal expenses and ultimately, prayed to enhance the maintenance and grant legal expenses as prayed for. In support of his contention, learned counsel relied upon the decision reported in Dr.Kulbhushan Kunwar v. Smt.Raj Kumari¹.

7. On the other hand, learned counsel for the respondent/husband would submit that granting of Rs.20,000/- per month as interim maintenance is very high. The Court below is supposed to grant 25% of the net income of the respondent/husband as maintenance to petitioner/wife but it granted more than 25% of the net income of the respondent/husband as maintenance and ultimately prayed to set aside the impugned order. Learned counsel placed reliance

¹ AIR 1971 Supreme Court 234

on the decisions reported in Bharat Petroleum Corporation Limited and another v. N.R Vairamani and another²; Shamima Farooqui v. Shahid Khan³ and Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy⁴.

8. In view of the submissions made by both sides, the points for determination are:

- 1) Whether the Court below is justified in granting an amount of Rs.20,000/- per month as maintenance to the petitioner/ wife?*
- 2) Whether the petitioner/ wife is entitled for enhancement of maintenance?*
- 3) Whether the petitioner/ wife is entitled for Rs.50,000/- towards legal expenses?*

9. POINTS:

As far as legal expenses are concerned, it can be adjudicated at the time of disposal of the main F.C.O.P. Therefore, no legal expenses are ordered at this stage.

10. Now the question is, whether the Court below is justified in granting interim maintenance of Rs.20,000/- per month to the petitioner/wife, from the date of filing of the petition.

11. Learned counsel for the respondent/husband relied upon Kalyan Dey Chowdhury' case (4 supra) and contended that the Hon'ble Apex Court was pleased to grant maintenance of 25% of the husband's net salary and above 25% cannot be granted. It may be noted that in the said case, the husband got

² (2004) 8 Supreme Court Cases 579

³ (2015) 5 Supreme Court Cases 705

⁴ AIR 2017 Supreme Court 2383

married second time and has a child from second marriage and hence the said decision is not applicable to the case on hand. The facts and circumstances of the other decisions relied upon by the learned counsel for respondent/husband are quite distinguishable from the facts and circumstances of the case on hand and hence no reliance can be placed over the said decisions.

12. Learned counsel for petitioner/wife relied upon the decision in Dr.Kulbhushan Kunwar's case (1 supra), wherein the Hon'ble Apex made a determination with regard to grant of quantum of maintenance. Therefore, it cannot be said that there is straight jacket formula in granting monthly maintenance as contended by the respondent/husband.

13. Grant of maintenance under Section 24 of the Hindu Marriage Act, 1955, depends upon the facts and circumstances of each case. Section 24 of the H.M. Act, reads as follows:

"24. Maintenance pendente lite and expenses of proceedings- where in any proceeding under this Act 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 necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."

14. There is no dispute with regard to the respondent/husband drawing gross salary of Rs.56,933/- per month. After deductions of Rs.21,182/-, he is getting net salary of Rs.35,751/- per month. Out of the said amount, Rs.10,000/- is deducted towards Voluntary Provident Fund (VPF). In the circumstances narrated, the petitioner/wife is living separately from the respondent/husband even before filing F.C.O.P.No.1836 of 2015.

15. There is no denial by the respondent/husband that he is not entitled to pay maintenance to the petitioner/wife. The only question is, what is the quantum of maintenance to be paid to the petitioner/wife. The respondent/husband is getting net salary of Rs.35,751/- per month and he is making some payments, which are deducted from his gross salary.

16. In the course of submissions, it is brought to the notice of this Court that presently the petitioner/wife is also working and earning income. Those subsequent developments, if any, can be adjudicated before the Court below.

17. The petitioner/wife has no other alternative income from the date of filing of petition. The status and consequential expenses etc., are also to be considered while granting maintenance under Section 24 of the HM Act. Therefore, in the given circumstances, this Court is of the considered opinion that granting of Rs.17,000/- per month towards interim maintenance to the petitioner/wife would meet the ends of justice.

18. Accordingly, the impugned order, dated 08.02.2018, passed in I.A.No.1747 of 2017 in F.C.O.P.No.1836 of 2015 by

the Court below, is modified and the respondent/husband is directed to pay an amount of Rs.17,000/- per month instead of Rs.20,000/- per month, to the petitioner/wife towards interim maintenance, from the date of filing of the subject interlocutory application. Rest of the directions given by the Court below remain unaltered.

19. With the above modification, C.R.P.No.1733 of 2018 filed by the husband is partly allowed and C.R.P.No.2634 of 2018 filed by the wife is dismissed.

Miscellaneous petitions, if any, pending in these two revision petitions are closed. There shall be no order as to costs.

Date: 26.11.2019

Yvl/scs

Dr. SHAMEEM AKTHER, J

