

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

C.R.P.No.6821 of 2018

ORDER:

Heard counsel for petitioner and counsel for the respondent.

2. This Revision is filed assailing the order dt.12.10.2018 in I.A.No.762 of 2018 in FCOP.No.59 of 2018 of the Judge, Family Court at L.B.Nagar, Ranga Reddy District.

3. Petitioner is the husband of the respondent. The said FCOP was filed by the petitioner against the respondent seeking divorce.

4. Pending the said O.P., respondent filed I.A.No.762 of 2018 under Section 24 of the Hindu Marriage Act, 1955 seeking educational expenses of Rs.90,000/- for academic year 2018-19 and maintenance of Rs.20,000/- each for two minor children per month.

5. It was contended that the petitioner had not paid the education fees for the academic year 2018-19 and the respondent had taken hand loan and other loans to meet the said expenses, that the petitioner is an LIC agent and he was financially well-off as his family has commercial properties and lands, and that the petitioner was also doing money lending business.

6. Petitioner filed a counter affidavit denying the said allegations and pleading that he is only an LIC agent, who had no money even for his sustenance, and he is suffering from certain illnesses also for which he was being given treatment. He pleaded that there was a Lok Adalat Award under which the respondent agreed to receive Rs.3,00,000/-, of which Rs.2,00,000/- amount was already received by the respondent and he has to still deposit Rs.1,00,000/-. He claimed that he had paid educational expenses to the children in 2014-15 and had also subsequently paid Rs.48,000/-.

7. Neither party adduced any evidence in the said application before the Court below.

8. By order dt.12.10.2018, the Court below allowed the said application and awarded Rs.10,000/- per month each to the minor children towards their interim maintenance from the date of petition.

9. The lower Court merely took note of the fact that the elder son was studying Intermediate in Sri Chaitanya College, while the second son is studying 8th class in Bhashyam School and it was the duty of the petitioner, as the father of the minor children to provide good education and also to meet the expenses for their maintenance. The Court also expressed a view that the earlier Settlement under which the petitioner claims to have paid

Rs.2,00,000/- pursuant to Lok Adalat Award, cannot deprive the minor children of further claim for maintenance.

10. Challenging the same, this Revision is filed.

11. Counsel for petitioner sought to contend that the petitioner had hardly no means of sustenance since he was only an LIC Agent; that there was no evidence regarding the ownership by the petitioner of any properties, residential or commercial, adduced by the respondent in support of the exorbitant demand for maintenance made by her; and the respondent also has a responsibility to meet the maintenance and education expense of the minor children, sine she herself employed as a Receptionist in a Diagnostic Centre.

12. Counsel for respondent refuted the above allegations and stated that the petitioner has capacity to make the payment of Rs.10,000/- per month as awarded by the Court below to each of the minor children and as a father, petitioner should ensure his children's education in quality educational institutions.

13. I have heard counsel on both sides.

14. In the instant case, it is to be noticed that petitioner has admitted that he is an LIC Agent and the respondent had admitted that she is working as a Receptionist in a Diagnostic Centre.

15. If the respondent contends that the petitioner is the owner of several commercial properties, she ought to have adduced some *prima facie* evidence of the same before the Court below. But, no evidence has been adduced by both parties before the Family Court, Ranga Reddy District at L.B.Nagar, in I.A.No.762 of 2018.

16. While it cannot be denied that it is the duty of the parents to provide good education to the children, it should also be kept in mind that the financial capacity of the parties has to be kept in mind before awarding any amount towards educational expenses and the fact that one parent, in the instant case, the respondent is insisting on getting the children educated in very expensive educational institutions, cannot be a factor in awarding high amount as maintenance and the petitioner cannot be compelled to meet the said expenditure, merely on the ground that the children would get good education.

17. It is also to be kept in mind that both parents are equally responsible for the maintenance and education of the children and have to contribute it. Admittedly the respondent is also earning income regularly as a receptionist in a Diagnostic Centre.

18. Therefore, in the facts and circumstances of the case, I am of the opinion that the Court below was not correct in directing the petitioner to pay a sum of Rs.10,000/- per month each towards education and other maintenance expenses of the minor

children without taking into account the financial capacity of the petitioner and ignoring the responsibility of the respondent also to contribute to the same. In my opinion, in the facts and circumstances of the case, the petitioner can pay Rs.3,000/- p.m to each of his two minor children from the date of filing of I.A.No.762/2018.

19. Accordingly, this Civil Revision Petition is partly allowed; the order dt.12.10.2018 in I.A.No.762 of 2018 in O.P.No.59 of 2018 of the Judge, Family Court at L.B.Nagar, Ranga Reddy District, is set aside; the said I.A., is allowed partly directing the petitioner to pay Rs.3,000/- per month to each of the two minor children towards their interim maintenance from the date of filing of I.A.No.762 of 2018 and to continue to pay the same pending the O.P. Petitioner is granted four (04) weeks time to deposit the arrears of interim maintenance in the Court below as per the above order, without fail. On such deposit, the respondent is permitted to withdraw the same without furnishing any security. No order as to costs.

20. Consequently, Miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

04th February, 2019.

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