

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Family Court Appeal No.567 of 2018

Date: 18.09.2019

Between:

Abhishek Yadav

..Appellant

And

Uma Devi

..Respondent

Counsel for the Appellant : Sri K.V.Raghuveer

Counsel for the Respondent : None appeared

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present Family Court Appeal filed by the petitioner in O.P.No.1578 of 2013 on the file of the Principal Judge, Family Court, City Civil Court, Hyderabad, aggrieved by the Order, dated 19.06.2018, passed therein.

2. The brief facts are that the appellant herein has filed O.P.No.1578 of 2013 under Section 12 (1)(C) of the Hindu Marriage Act for granting a decree of nullity of the marriage of the petitioner with the respondent-wife solemnized on 28.09.2013. During the pendency of the said O.P., the Family Court vide order, dated 09.12.2017, in I.A.No.349 of 2016, has directed the appellant-petitioner to pay the interim maintenance @ Rs.15,000/- per month from the date of the petition to the respondent-wife. As the appellant herein did not pay the said interim maintenance, the respondent-wife has filed I.A.No.782 of 2018 under Section 151 C.P.C., to strike off the defence of the appellant-petitioner in O.P.No.661 of 2017 (which O.P. was filed by the respondent-wife for restitution of conjugal rights). In the said I.A.No.782 of 2018, the Family Court vide Order, dated 06.06.2018, has granted time to the appellant herein to pay the entire arrears of maintenance amount by 15.06.2018, but the petitioner did not comply with the said order. The Family Court vide Order, dated 19.06.2018, has dismissed O.P.No.1578 of 2013 filed by the appellant-petitioner and has also struck off his right of defence in O.P.No.661 of 2017 filed by the respondent-wife. The Order of the Family Court, dated 19.06.2018 is impugned in the present F.C.A.

3. Heard Sri K.V.Raghuveer, the learned Counsel for the appellant-petitioner. None appeared for the respondent-wife.

4. It is the case of the appellant-petitioner that as against the grant of interim maintenance, he has filed Civil Revision Petition No.2149 of 2018 before this Court and the same is pending adjudication. Further, it is stated that even though the C.R.P. was numbered, the same could not be taken up for hearing and as such, the order of the Family Court striking off his defence in O.P.No.661 of 2017 and his right to prosecute O.P.No.1578 of 2013 is not sustainable and the further direction of the Family Court giving liberty to the respondent-wife to file an appropriate petition for execution of the orders in I.A.No.349 of 2018, dated 19.12.2017, cannot be sustained in view of the fact that by dismissal of O.P.No.1578 of 2013, all the Interlocutory Applications in the said O.P. will automatically be deemed to have been dismissed also.

5. We have gone through the record and after hearing the arguments advanced by the learned Counsel, we are of the opinion that the order of the Family Court in O.P.No.1578 of 2013 is legally valid and we do not find any infirmity in the said order for the following reasons:

i) When the appellant-petitioner was directed by the Family Court to pay the interim maintenance to the respondent-wife, he is duty bound to follow the same unless and until the same is set aside or the operation of the same is stayed by a Superior Court. Mere pendency of the Civil Revision Petition filed by him cannot be a ground for not paying the maintenance already granted. In the absence of the same, the respondent-wife in the said O.P. has every right to file a petition for execution of the orders in Interlocutory Applications or to file a petition to strike off the defence of the party against the person, who has not obeyed the order of the Family Court granting interim maintenance and as such the lower Court was perfectly justified in passing the impugned order.

ii) The second contention raised by the appellant-petitioner that the Interlocutory Applications which were filed in O.P.No.1578 of 2013 stand dismissed automatically by virtue of dismissal of O.P.No.1578 of 2013, cannot be sustained in view of the fact that the order in I.A.No.349 of 2016, dated 09.12.2017, granting interim maintenance of Rs.15,000/- per month to the respondent-wife was allowed and became final. The granting of interim maintenance allowance of Rs.15,000/- per month is a right which has accrued to the respondent-wife and she is entitled to the same unless and until the said order is set aside or modified by a Superior Court. In the absence of any stay or modification of the maintenance order by a Superior Court, the Respondent-wife is entitled to get the same executed even if there is no such observation by the lower Court.

6. On both these grounds, the Family Court Appeal filed by the appellant-husband is devoid of merits and the same is hereby dismissed confirming the order passed by the Family Court in O.P.No.1578 of 2013, dated 19.06.2018. No order as to costs.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

18th September, 2019
smr