

HON'BLE SRI JUSTICE A.RAJASHEKAR REDDY

CIVIL REVISION PETITION Nos.738 and 739 of 2020

COMMON ORDER:

As the issue involved in both these writ petitions is arising out of order dated 06.03.2020 in IA.No.358 of 2018 in FCOP.No.1252 of 2017, they are being heard together and disposed of by this common order.

2.CRP.No.738 of 2018:

This Civil Revision Petition is filed by the petitioner/husband under Section 24 and 26 of the Hindu Marriage Act read with Section 151 CPC against order dated 06.03.2020 in IA.No.358 of 2018 in FCOP.No.1252 of 2017, wherein and whereby the Court below partly allowed the application filed by the respondent/wife granting interim maintenance of Rs.2 lakhs to the children Master Bommi Arush and Baby Bommi Amaria from the date of petition i.e. 29.03.2018 to 04.12.2018 and thereafter from 05.12.2018 at the rate of 3,12,500/- per month until further orders. It is further ordered that the interim maintenance amount shall be credited to the bank account of the wife by the husband on or before 10th of every month and the arrears of maintenance shall be paid by the husband in five equal installments commencing from April 2018 onwards and the first installment shall be paid on 10.04.2020 and also the arrears of installments shall also be paid along with interim maintenance until total clearance of the same apart from the above Rs.25,000/- was granted towards legal expenses to the

wife for prosecuting the case which shall be paid within two months from the date of the order i.e. 06.03.2020.

3. CRP.No.739 of 2020:

This Civil Revision Petition is filed by the petitioner/wife against the order dated 06.03.2020 in IA.No.358 of 2018 in FCOP.No.1252 of 2017, seeking enhancement of maintenance to Rs.4,91,700/- per month towards interim maintenance of minor children.

4. For the sake of convenience the parties herein after will be referred to as arrayed in I.A.No.358 of 2018 in FCOP.No.1252 of 2017.

The marriage between the petitioner and respondent took place on 03.08.2008 as per Hindu Rites and Customs. Out of their wedlock, both were blessed with son and daughter by names Master Bommi Arush and Baby Bommi Amaria. They lived happily about seven years after the marriage in USA and returned to India in the year 2015. In fact the husband sent back the petitioner and the two children to India on 04.10.2015 and the respondent came to India on 26.10.2015. The respondent again left India in December 2015 stating that he would come back to India permanently after selling all the properties in USA. But, he did not come back to India till January, 2017. As the respondent left to USA by leaving the wife and the children, the wife filed FCOP.No.1139 of 2017 for Restitution of Conjugal Rights. Later, the husband filed FCOP.No.1252 of 2017 for Dissolution of Marriage against the wife. Though the respondent visited India and met the petitioner and two children, he has not spent any

amount on them and no maintenance was provided even for the two children. The children were admitted in Chirec School and also engaging them in various constructive activities like music classes, swimming, tennis etc., by spending huge amounts. Therefore, the petitioner and two children are entitled for the benefits to meet the standard of living of the respondent, which would include the medical needs and all other maintenance expenses for them. The respondent is working in a senior position in PNC Bank, Pittsburgh, USA and earning Rs.1,95,00,000/- per annum or about 3 lakhs dollars per annum i.e, Rs.16,50,000/- per month, as such, he is capable of paying Rs.6.50 lakhs per month towards interim maintenance to the petitioner and the two children.

5. Counter affidavit is filed by the respondent/husband denying the averments in the affidavit filed in support of the application stating that from the inception of marriage, there were problems with the petitioner. The respondent encouraged the petitioner to study further in USA and completed her MS and started working in 2011 at HSBC. The petitioner subjected the respondent to various types of cruelty in various ways. The respondent also suggested going to a marriage counselor to work out the differences as he wanted to save the marriage for the sake of children, but the petitioner refused the same. The respondent is unable to enjoy his role as a father and he has a stand to settle in USA. The petitioner returned to India with children on a false pretense of returning after a month's visit on 04.10.2015. The efforts made by the respondent to take back the petitioner to USA

in several ways personally and through elders failed. The respondent is ready to give the children, the life they deserve and ready to maintain them, if they come back to USA. It is stated that the petitioner is an employee working at SKS Micro Finance as a Principal Manager and she is living with her parents in their house at Madhapur and has no necessity for incurring expenses due to the same. The expenses referred to by the petitioner are in the form of gross overstatement to extract money under the guise of expenses. The earnings of the respondent as shown in the petition are not correct. The petitioner, who is professionally qualified and capable of sustaining, is not entitled for maintenance. The children are entitled to the same standard of life as the respondent, who lives in USA and it applies to the respondent as well and therefore, the costs of the living of the respondent are also to be taken into consideration.

6. The trial Court, after considering the pleas and contentions raised by both the wife/petitioner and husband/respondent, passed impugned orders on 06.03.2020 granting interim maintenance, as stated supra.

7. Heard Sri P.Venugopal, learned Senior Counsel appearing for Smt.V.Preeti Reddy, learned counsel for the petitioner/husband in C.R.P.No.738 of 2020, who submits that the respondent/wife is living separately on her own, as she is having income and that she is not interested in joining the company of the petitioner/husband, as such, petitioner had to file FCOP No.1252 of 2017 for grant of decree of divorce against the respondent/wife on the ground of cruelty. He submits that the

trial Court, without any basis, without affording an opportunity, granted exorbitant interim maintenance. He submits that since the petitioner/husband has to maintain himself and his widowed mother, the interim maintenance claimed by the respondent/wife towards maintenance of children is very exorbitant. He further submits that even though no documents are marked, the trial Court granted exorbitant interim maintenance. He also submits that the trial Court granted maintenance more than the amount claimed by the wife and that the petitioner/husband is ready and willing to maintain the children, as it is his responsibility.

8. On the other hand, Sri V.Ravinder Rao, learned Senior Counsel appearing for Sri M.Vishnu Vardhan Reddy, learned counsel for the respondent/wife in CRP No.738 of 2020 submits that the trial Court, after taking into account of the standard of living of the wife and husband, basing on the admissions made by the husband/petitioner with regard to his earnings i.e., Rs.12.00 lakhs per month, granted interim maintenance, which is on lower side, as such, the respondent/wife filed CRP No.739 of 2020 for enhancement of interim maintenance. He submits that the respondent/wife could substantiate the earnings of the husband that he is earning Rs.16,50,000/- per month, but the husband has not filed any salary certificate or income tax returns showing his monthly income, which shows the conduct of the husband, as such, the interim maintenance granted by the trial Court, cannot be interfered with. He submits that the trial Court recorded that the husband is earning Rs.8.00 lakhs per month, after

deductions, as such, trial Court could have granted interim maintenance as prayed for.

9. In view of rival contentions of both parties, the only issue that is required to be considered is whether the interim maintenance granted by the trial Court is proper and reasonable?

10.POINT:

In this case, it is to be seen that the marriage took place between the petitioner and the respondent and they were blessed with two children out of their wedlock. From pleadings of both the parties, it appears matrimonial differences arose between the parties, after birth of both the children, the petitioner/husband and the respondent/wife are living separately. The children are living with their mother since the date of separation in the year 2017, which lead to filing of FCOP No.1139 of 2017 for restitution of conjugal rights by the wife/respondent and the petitioner/husband filed FCOP No.1252 of 2017 for dissolution of marriage with the respondent/wife on the ground of cruelty. A perusal of pleadings goes to show that both the petitioner and respondent had lead very luxurious life befitting their status. Neither in the petition filed by the petitioner/husband nor in the counter filed by the respondent/wife indicates exact salary being earned by the petitioner/husband before the trial Court. The trial Court, basing on the documents filed by both parties and admissions made by the petitioner/husband, came to the conclusion that the petitioner/husband is earning Rs.8,00,000/- per month, though the respondent/wife claims that he is earning Rs.16,50,000/- per month. The trial Court granted interim

maintenance, as observed supra. The salary certificate filed by the petitioner/husband at page 66 of the material paper is not disputed by the respondent/wife. If that is taken into account, the salary per annum of the petitioner/husband is 1,75,000 dollars per annum, it comes to Rs.1,31,25,000/- per annum, which comes to Rs.10,93,750 per month and 14583 dollars per month, i.e., the gross salary. According to learned senior counsel for respondent/wife, if 1/3rd is deducted from Rs.10,93,750/- i.e., Rs.2,53,000/- it comes to Rs.7,65,000/- per month and after deducting his contribution i.e., 40% towards his maintenance, it comes to Rs.4,50,000/- but the trial Court has granted only Rs.3,12,500/- per month from the date of petition till the date of payment.

11. According to Sri P.Venugopal, learned Senior Counsel for the petitioner/husband, the net salary of the husband, after deductions is 4,268.95 per fortnight and it comes to 8538 USD per month, which is equivalent to INR Rs.6,40 lakhs and if the claim made by the respondent/wife is taken into account i.e., far less than the claim made by her before the Court below. The calculation given by the learned counsel for the respondent/wife is not on correct side and cannot also be accepted since after deduction, the salary would be only 8538 USD per month, which is equivalent to Rs.6,40,000/- per month. Even though wife filed petition for maintenance for herself and also on behalf of children, later she given up her maintenance. Even if the income of the husband is taken as Rs.6,40,000/- per month, leaving apart the other income from the other properties earned by the husband. It

is also not disputed that petitioner/husband is having other properties. The conduct of the husband goes to show that he has not filed any salary certificate or income tax returns before the Court below. The Court below has considered all these aspects and granted interim maintenance. The counter affidavit filed by the petitioner/husband is as vague as it can be and now the husband files affidavit after the affidavit before this Court.

12. It is pertinent to note here that the petitioner/husband filed I.A.No.2 of 2020 seeking to file additional material papers i.e., bank pass book, statement etc., He also filed I.A.No.3 of 2020 seeking modification/clarification of the interim order passed in I.A.No.1 of 2020 in CRP No.738 of 2020 dated 28.05.2020. Counter and additional affidavits have been filed by the respondent/wife rebutting the contentions of the petitioner/husband. Be that as it may, the petitioner/husband could have filed the same before the court below with correct version, but failed to do so. Though it is stated that the documents are not marked under Hindu Marriage Act, strict Rules of Evidence are not applicable to the proceedings under the Hindu Marriage Act.

13. The Indian Evidence Act is not made applicable in a mechanical manner. The discretion is vested with the Family Court to receive any evidence, any report, any relevant statement, documents, information etc, which is necessary for its assistance to deal effectually with a dispute. It is made permissible in the statute whether or not such documents are relevant or admissible in the Evidence Act. Thus, "the powers are vested with the Family

Court under Section 14 of the Family Court Act to take those documents on record. It is needless to mention that the Family Court is bound to function as per the enabling provisions and the statute under Section 20 of the Family Court Act by which it was created. The overriding effect given to the Family Courts under Section 20 of the Family Court Act is confined not only to the Code of Civil Procedure, but also to other enactments. It is always the duty of the Court to give such construction to a statute as would promote the purpose or object of the Act. (See **Nawab Mir Barkat Ali Khan Waleshan Bahadur v. Princess Manolya Jah** [2018 (4) ALD 204] and also order of this Court in CRP No.206 of 2020 dated 15.06.2020).

14. A perusal of the impugned order of the Court below goes to show that the respondent/wife filed I.A.No.2310 of 2019 to summon the petitioner/husband for filing the forged documents by fabricating and creating the same for the purpose of denying proper maintenance to the children, which is pending before the Court below.

15. The Court below also observed that two children of the petitioner and respondent are leading a quality life and they are being admitted in an International School, apart from involving them in extra curricular activities. The Court below, after considering the documents filed before it, granted interim maintenance as stated supra. It is also found in the impugned order that though the respondent/wife called for the particulars of the statement of account of the petitioner/husband relating to the IT returns and the assets in the name of petitioner/husband, the

same were not filed by the petitioner/husband and that there is nothing on record to show that the petitioner/husband is traveling to India every month, as such, his expenditure of Rs.1,25,000/- per month towards traveling to India every month was not considered. The court also found that the petitioner/husband has not spent any amount towards maintenance for the respondent/wife and two children from 04.10.2015 onwards. It is also found from the correspondence between the parties that the petitioner/husband was willing to pay the maintenance amount for all the counts for the sake of development of the children in full fledged manner and that to meeting the standards of the family of the children and the respondent/wife, as such, the Court below rightly granted interim maintenance from the date of filing of the petition. Moreover, I.A.No.2310 of 2019 to summon the petitioner/husband for producing the documents relating to income of the petitioner/husband is pending before the Court below. The trial Court has considered the facts and circumstances of the case and also by taking into account the conduct of the husband in not disclosing the true income, has granted interim maintenance, as such, no interference is called for by exercising power of jurisdiction under Article 227 of the Constitution of India.

In view of above facts and circumstances, I do not see any reason to interfere with the impugned order granting interim maintenance to the respondent/wife or for enhancement of compensation and the order of the Court below is confirmed.

Accordingly, both these Civil Revision Petitions are dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

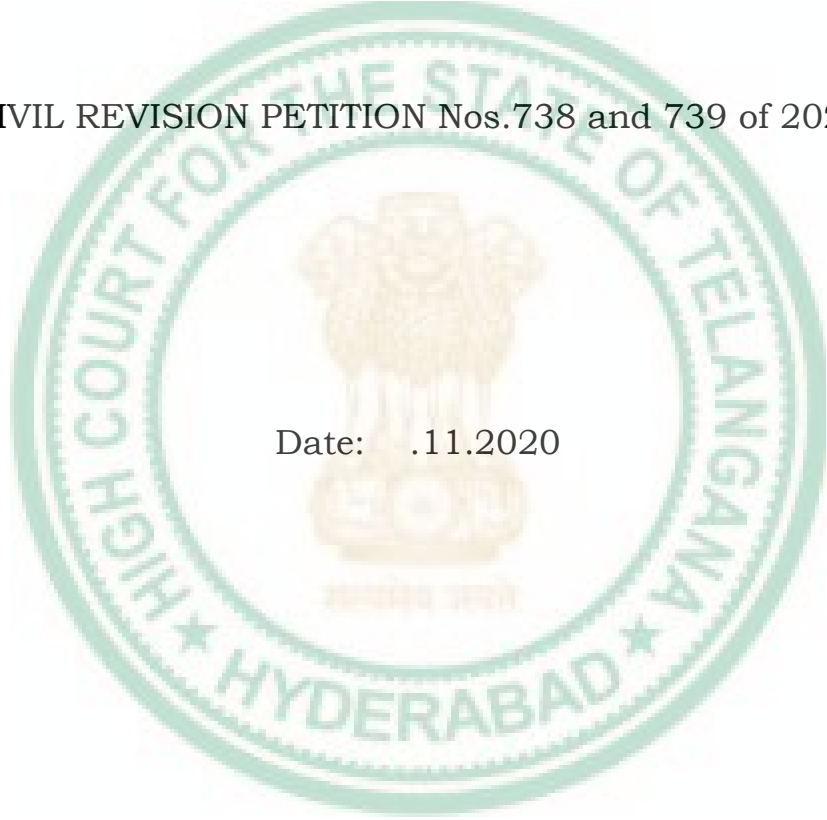
Dated: 02-12-2020
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Date: .11.2020



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