

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.Nos.600 & 2594 OF 2017

COMMON ORDER:

Wife filed C.R.P.No.600 of 2017 and husband filed C.R.P.No.2594 of 2017 under Article 227 of the Constitution of India are directed against the order dated 01.10.2016 in I.A.No.31 of 2015 in F.C.O.P.No.123 of 2015, on the file of the learned Judge, Family Court-cum-III Additional District and Sessions Judge, Warangal, wherein the said application filed by the wife, through her natural father and GPA holder, for grant of interim maintenance against her husband, was allowed-in-part directing the husband to pay a sum of Rs.10,000/- per month to the wife towards interim maintenance from the date of petition, besides directing to pay a sum Rs.5,000/- towards litigation expenses.

2. Heard learned counsel for the parties in both the revisions.

Perused the record.

3. The wife filed F.C.O.P.No.123 of 2015 against her husband under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The husband filed counter in the said FCOP.

While so, the application in I.A.No.31 of 2015 was filed by the wife under Section 24 of the Hindu Marriage Act seeking maintenance. The husband resisted the same by filing counter. On a consideration of the material on record, the learned Judge, Family Court, Warangal allowed the application and awarded a sum of Rs.10,000/- per month to the wife towards maintenance. Challenging the same, the wife filed C.R.P.No.600 of 2017 seeking enhancement of maintenance, while the husband filed C.R.P.No.2594 of 2017 seeking to set aside the impugned order.

4. Learned counsel for the husband submits that a divorce case was filed by the husband against his wife on 13.02.2015 before the District Court at Houston, Texas vide case No.2015-08368. Subsequently, a decree of divorce was granted on 31.03.2016 by the said Court and the wife did not prefer any appeal against the divorce and the same had become final. Learned counsel further submits that wife took the gold jewellery which was presented by her husband. In pursuance of the decree of divorce, the husband is paying \$500 for personal needs of the wife and \$1800 for the apartment rent. Therefore, the order impugned is

not tenable and the wife is not entitled for any maintenance and prayed to set aside the impugned order.

5. On the other hand, learned counsel appearing for the wife submits that the trial court had rightly awarded maintenance and there is no infirmity in the impugned order and prayed to dismiss the revision.

6. A perusal of the material on record would disclose that this court has caused oral enquiry with learned counsel for the husband as to whether granting of a decree in the court at USA is true and binding on the Indian Courts or not. Learned counsel submitted that it is true, but subject to its maintainability in the Indian Courts, it cannot be taken into consideration for the purpose of deciding these revisions.

7. Both the learned counsel for the parties across the Bar submitted that in view of the undisputed fact of divorce between the parties, subject to maintainability of the said divorce granted in Indian Courts, would be the subject matter to be adjudicated at the time of final disposal of the FCOP.

8. Having regard to the submissions of both the learned counsel, I am of the view that it would be proper to set aside the impugned order and direct the trial court to dispose of the impugned application filed for maintenance afresh, after taking into consideration the subsequent developments that have taken place i.e., issue of divorce between the parties

9. The civil revision petitions are disposed of. The impugned order dated 01.10.2016 in I.A.No.31 of 2015 in F.C.O.P.No.123 of 2015, on the file of the learned Judge, Family Court-cum-III Additional District and Sessions Judge, Warangal is hereby set aside. The matter is remanded to the trial court for fresh consideration in accordance with law after affording opportunity to both sides. There shall be no order as to costs.

10. Pending miscellaneous petitions, if any, shall stand closed.

A.SANTHOSH REDDY, J

04.01.2023

Lrkm