

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2904 of 2017

ORDER:

The present Civil Revision Petition is filed by the respondent in I.A. No.693 of 2016 in F.C.O.P. No.7 of 2015 challenging the order dated 15.02.2017 therein passed by the Judge, Family Court - cum - Additional District Judge, Nizamabad, whereby and where-under *pendente lite* maintenance of Rs.3,000/- per month from the date of petition was granted, besides awarding a sum of Rs.2,000/- towards legal expenses and a sum of Rs.8,000/- towards transportation charges to the petitioner-wife.

2. Heard Sri Ali Farooq, learned counsel for the revision petitioner - husband, and Sri P. Praveen Kumar, the learned counsel for the respondent - wife.

3. The main submission of the learned counsel for the revision petitioner is, in an application filed under Section 12 (1) (c) of Hindu Marriage Act, 1955 (For short 'Act'), requesting to declare the marriage as null and void, granting interim maintenance is uncalled for. Second ground raised is that though, the trial was commenced and was at the stage of leading evidence on behalf of the respondent making an application of this nature was highly untenable.

4. For better appreciation, the provisions of Sections 24 and 25 of the Act require advertence. They read thus:

“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 the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay the petitioner the expenses of 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.

25. Permanent alimony and maintenance:- (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purposes by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immoveable property of the respondent.

(2) If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the Court is satisfied that the party in whose favour an order has been made under this Section has re-married or, if such party is the wife, that she has not remained chaste or if such

party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

5. The trial Court advertent to the very same submissions made by the learned counsel for the petitioner - husband before it, observing that the petitioner - husband filed a case in O.P. No.7 of 2015 to declare the marriage against him and the respondent - wife as null and void, it would amount to admission on the part of the petitioner herein that he is the husband of the respondent herein until the Court declares their marriage as null and void; the intention of Legislature in enacting Section 24 of the Act is to enable the wife or the husband, who do not have independent income sufficient to support and necessary expenditure of any proceeding under the Act provided for payment of interim maintenance and legal expenses, to avert any hardship to such party; the inquiry in that regard is a summary inquiry; keeping in view the object of the provisions of Section 24 of the Act, the trial Court decided to fix justifiable amount towards maintenance as well as legal expenses.

6. The trial Court then referring to, that the respondent - wife was not a working woman; that the petitioner - husband is working as Software employee, residing at Chandrapuri Colony, Mansoorabad, L.B. Nagar, Ranga Reddy District, which fact was admitted by him in his counter and must be drawing an amount between Rs.25,000/- and Rs.30,000/- per month, and opining that it is a fit case to order

maintenance *pendente lite* of Rs.3,000/- per month from the date of filing the petition, Rs.2,000/- towards legal expenses; Rs.8,000/- towards transportation charges in order to meet conveyance of to and fro charges from Jagtial to Nizamabad, awarded the same.

7. Now, answering the contention of the learned counsel for the petitioner that the very purpose of filing the marriage O.P. was to declare the marriage as null and void as it was performed against his will under coercion and pressure and, therefore, the respondent herein cannot be treated as legally wedded wife, and in such an event, no interim maintenance can be awarded, more particularly, when the trial has commenced and the FCOP is at the verge of completion of trial, it is needless to state that in view of the intent of the Legislature in enacting Sections 24 and 25 of the Act, so long as the marital tie between the spouses remain intact, the question of denying the request for award of interim maintenance, legal expenses and other expenses does not arise. No doubt, it appears the said application was not filed at the inception stage, but that cannot be a ground to reject the request. The period provided for disposal of an application for interim maintenance is 60 days, and when once an application is filed, the Court has no other option except to dispose of the application either way on merits within the statutory period provided.

8. The ruling in **Manish Jain v. Akanksha Jain**¹, relied on by the learned counsel for the respondent - wife is to the effect that wife

¹. 2017 (4) ALD 36 (SC)

though educated, having no permanent source of employment and permanent source of income to support herself, would justify ordering maintenance and the financial position of the wife's parents is immaterial. The other ruling in **Bharat Hegde v. Saroj Hegde**² for the proposition that there cannot be any mathematical exactitude in determining interim maintenance, and the Court has to take a general view, and in the said context, a learned Single Judge of Delhi High Court has noted eleven (11) factors that can be culled out which are taken into consideration while deciding the application under Section 24 of the Act, thus:

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- 1 Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non applicant has to maintain.
5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non applicant.
9. Some guess work is not ruled out while estimating the income of the non applicant when all the sources or correct sources are not disclosed.
10. The non applicant to defray the cost of litigation.
11. The amount awarded Under Section 125 Cr.PC is adjustable against the amount awarded Under Section 24 of the Act.”

9. Therefore, there is absolutely no legal infirmity in passing the order by the trial Court. There is no merit in the present revision and, therefore, the same is liable to be dismissed.

². 2007 LawSuit (Del) 146

10. The present Civil Revision Petition is, accordingly, dismissed, confirming the order and decree, dated 15.02.2017, passed by the trial Court in I.A. No.693 of 2016 in FCOP No.7 of 2015. There shall be no order as to costs.

However, it is made clear that the trial Court shall dispose of the petition i.e., F.C.O.P. No.7 of 2015 within a month from the date of receipt of a copy of the order uninfluenced by any of the observations made in the above.

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

August 31, 2017
GBS/Mgr

A. SHANKAR NARAYANA, J

