

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.Nos.7556 & 7615 of 2018

COMMON ORDER:

Heard the learned counsel for the petitioner.

2. These two Revision Petitions filed under Article 227 of the Constitution of India by the petitioner against the respondent.

3. Since the Revision Petitions arise out of the same O.P.No.474 of 2015 on the file of Principal Judge, Family Court-cum-Additional Chief Judge, Hyderabad, they are being disposed of by this common order.

4. Petitioner in both these cases is the husband of the respondent.

5. O.P. was filed by the petitioner against the respondent for dissolution of the marriage performed between them on 05-06-2013 on the ground of cruelty invoking Section 10 (1) (x) of the Indian Divorce Act, 1869.

6. The respondent herein filed counter claim also seeking divorce from the petitioner, and in addition, also sought permanent alimony of Rs.70.00 lakhs from the petitioner.

7. The petitioner, during the course of trial, produced pay slip indicating that his salary gross earnings are Rs.1,21,144/-.

8. Respondent however contended that the petitioner would be earning at least Rs.3.00 lakhs per month and filed initially

I.A.No.1881 of 2018 to summon the HR Manager of the company, where the petitioner was employed, as a witness to examine him on the aspect of petitioner's annual salary/monthly salary/gross salary/net salary etc.

9. After counter was filed by the petitioner opposing the same, it appears that the said application was not taken up. So respondent again filed I.A.No.2033 of 2018 for the same relief with same contentions.

10. Petitioner herein opposed the same and contended that he had already filed salary certificate before the Court and there is no necessity for summon the HR Manager of the company where he was employed. It is also alleged that if such order is granted, there is every possibility of the employer dismissing the petitioner from service instead of sending the HR Manager to the Court. It is further contended that when application for the same relief is already pending, a second application is not maintainable.

11. Respondent also filed I.A.No.1882 of 2018 to reopen the evidence of petitioner for the purpose of further evidence after examination of the HR Manager of the petitioner's employer on the aspect of permanent alimony, pointing out that the Advocate Commissioner, who recorded evidence, had not filed the report and she was under the impression that more time would be granted, but unfortunately her evidence is closed.

12. This application was also opposed by the petitioner who contended that there is no necessity to reopen the evidence to allow the respondent to give further evidence and it would unnecessarily delay disposal of the main O.P.

13. By order dt.04-12-2018, the Court below allowed both the I.As. on payment of costs of Rs.1000/- to the petitioner in I.A.No.2033 of 2018. The Court below held that since there is dispute raised about the income and earning capacity of the petitioner, no prejudice would be caused to the petitioner if the HR Manager is summoned to speak about such aspects, and it could help the Court to come to the right decision regarding permanent alimony paid to the petitioner, in the event of her success in the counter claim. It also held that since I.A.No.2033 of 2018 is allowed, it is necessary to allow I.A.No.1882 of 2018 also, to enable the respondent to meet further evidence to prove income of the petitioner.

14. Assailing the same, these two Revision Petitions are filed.

15. Learned counsel for the petitioner firstly contended that the Court below ought not to have entertained I.A.No.2033 of 2018 for the same relief, which was sought in I.A.No.1881 of 2018 which is pending for the same relief. In my opinion, once I.A.No.2033 of 2018 was decided, there is no need to decide I.A.No.1881 of 2018 and

it can be ceased. Respondent cannot be blamed if I.A.No.1881 of 2018 is not taken up forcing her to file I.A.No.2033 of 2018.

16. That apart, when there is a specific dispute about earning capacity of the petitioner, and the pay slip filed by the petitioner is seriously disputed by the respondent, the only proper way to ascertain the income particulars of the petitioner is by summoning the HR Manager employed by the Company where petitioner is employed.

17. The apprehension expressed by the petitioner about his service being terminated, if such order is passed by court below, is not supported by any material and, in fact, if such order is passed and if the HR Manager does not appear, he would be committing contempt of the Court order and would face the consequences from the Court below. So it is highly unlikely that the employer of the petitioner would want to face the wrath of the Court by not sending their HR Manager, if there is a Court order to that effect.

18. In this view of the matter, I do not find any error of jurisdiction in the orders passed by the Court below in allowing I.A.No.2033 of 2018 and I.A.No.1882 of 2018 to summon the HR Manager of the petitioner's company and also to reopen the evidence of the respondent.

19. Accordingly, both the Revision Petitions are dismissed.
No costs.

20. As a sequel, the miscellaneous petitions pending, if any,
shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-01-2019
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