

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH 2018

BEFORE

THE HON'BLE MR. JUSTICE RAGHVENDRA S. CHAUHAN

WRIT PETITION No.6873/2018 (GM-FC)

BETWEEN:

Dr. Deepak K. S. @ K. S. Rudraprasad,
Aged about 37 years,
S/o Sri K. V. Shivakumar,
R/at No.106, Nagasree,
C. M. Extension, Kyathasandra,
Tumkur – 572 104.

...Petitioner

(By Sri R. B. Sadasivappa, Advocate for
Smt. M. Rajeshwari, Advocate)

AND:

Dr. Sowmya Sharath,
W/o Dr. Deepak K. S.
@ K. S. Rudraprasad,
D/o Sri Sharathchadra,
Aged about 33 years,
R/at No.25, 5th Temple Road,
16th Cross, Malleswaram,
Bengaluru -- 560 003.

... Respondent

(By Sri S. M. Dayananda Patil, Advocate)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the impugned order dated 9.1.2018 passed by the 2nd Additional Family Court, Bengaluru on I.A.No.3 filed under Section 24 of Hindu Marriage Act in M.C.No.4224/2015 vide Annexure-A.

This writ petition coming on for preliminary hearing this day, the Court made the following:

ORDER

Dr. Deepak K. S., the petitioner, has challenged the legality of the order, dated 9.1.2018, passed by the II Additional Family Court, Bengaluru, whereby the learned Family Court has directed the petitioner to pay ₹15,000/- per month to the child born within the wedlock, which would also include ₹5,000/- per month ordered by the learned MMTC, Bangalore, and to pay ₹20,000/- per month to the respondent – wife towards her accommodation, and ₹25,000/- towards the litigation expenses. The learned Family Court has also directed the petitioner to pay 50% of the education expenses of his son.

2. Briefly the facts of the case are that, on 15.3.2009, the petitioner and the respondent were married according to the Hindu rites and customs. During the wedlock, a son was born. However, as disputes erupted between the husband and the wife, they left each other's company. Subsequently, the petitioner filed an application under Section 9 of the Hindu Marriage Act, 1955 ('the Act' for short). However, the said application was eventually withdrawn by him. Thereafter, he filed a divorce petition on the ground of cruelty and desertion by the wife before the learned Family Court. During the pendency of the

litigation, the wife filed an application under Section 24 of the Act for seeking maintenance for the child, and for the accommodation that she requires in order to have an independent residence of her own. She also filed an application, namely I.A.No.6, for seeking that the petitioner's income tax returns for the years 2008-09 to 2016-17, should also be summoned. However, by order dated 9.1.2018, the said application was dismissed by the Court. However, as the petitioner is aggrieved by the interim maintenance granted to the respondent, he has filed the present writ petition before this Court.

3. Mr. R. B. Sadasivappa, the learned counsel for the petitioner, has raised the following contentions before this Court:-

Firstly, the application filed by the wife for seeking maintenance is nothing, but a clever ploy to harass the petitioner.

Secondly, since it is the respondent who has left the matrimonial home, without any rhyme or reason, since it is she who did not even co-operate during the mediation carried out,

while the application for conjugal rights was pending, she is disentitled from claiming any accommodation amount from the petitioner.

Thirdly, in the application filed by the respondent under the Protection of Women from Domestic Violence Act, 2005 ('Domestic Violence Act' for short), she did not claim any accommodation amount from the petitioner. While granting a maintenance of ₹5,000/- per month, the learned civil Court has not directed the payment of any accommodation amount by the petitioner to the respondent. Thus, the present impugned order is contradictory to the order passed by the learned civil Court in the application filed by the respondent - wife under the Domestic Violence Act.

Fourthly, under Section 24 of the Act, the learned Court is required to take into consideration not only the income of the husband, but also the income of the wife. Admittedly, the wife is working, and is earning ₹46,000/- per month. Therefore, the learned Court was not justified in granting the accommodation amount. In order to buttress this plea, the learned counsel has relied on the case of **NEETA RAKESH JAIN v. RAKESH**

JEETMAL JAIN (AIR 2010 SC 3540). Therefore, while the petitioner has no objection to the interim maintenance amount paid to the son, the petitioner is aggrieved by the interim maintenance amount paid to the respondent.

Lastly, relying on the case of **K. R. ARUN v. SMT. M. LATHA [2015 (1) AKR 500]**, the learned counsel has pleaded that if the wife, who is well qualified, chooses to remain idle, then she would be disentitled from claiming an interim maintenance. Since the interim maintenance being paid to her is on the higher side, this part of the impugned order, granting her accommodation amount of ₹20,000/-, should be set aside by this Court.

4. On the other hand, Mr. S. M. Dayananda Patil, the learned counsel for the respondent – wife, has submitted the following counter-contentions:-

Firstly, it is incorrect to say that the wife has filed the application for seeking interim maintenance in order to harass the husband. In fact, the wife is forced to live with her own aged parents along with the child. Since the wife's younger sister is of marriageable age, since the respondent happens to be a

professional woman, she finds it odd to stay with her parents. Therefore, naturally she is looking for an alternative accommodation. However, as her means are limited, as she is earning hardly ₹46,000/- per month, she would find it difficult to arrange for an accommodation in order to maintain certain life-style. Thus, it is out of financial necessity that she was forced to file an application for seeking the interim maintenance.

Secondly, even if no accommodation amount is paid to her, in the order passed by the learned Civil Judge under the D. V. Act, it would not preclude the respondent from filing an application under Section 24 of the Act. Since the maintenance paid under the Domestic Violence Act and the Hindu Marriage Act are complementary to each other, since the Domestic Violence Act supplements the Hindu Marriage Act, the respondent would be justified in seeking relief even under the Hindu Marriage Act.

Thirdly, while the respondent had admitted that she is earning, while she had alleged that her husband has a substantial income, she had tried to prove her stand by requesting that the income tax returns should be summoned, and should be produced before the Court. However, her

application (I.A.No.6) was dismissed by the learned Family Court. Moreover, while filing his objection to the application, the petitioner has kept a studied silence with regard to the income earned by him. Most importantly, he has not even denied the specific allegation made by the wife with regard to his income. Therefore, it is too late for the petitioner to plead that he does not have sufficient income. Furthermore, since there was no specific denial made by the petitioner, the learned Court was justified in accepting the statement made by the respondent with regard to the petitioner's income.

Lastly, the learned Family Court has taken the factors mentioned in Section 24 of the Act, namely the income earned by the wife, the alleged income of the husband – the allegations not denied by the husband, the fact that both the parties are professional people, they belong to the middle class or upper middle strata of the Society, therefore certain standard of living has to be maintained by the respondent – wife. After considering all these factors, the learned Court has directed the payment of ₹20,000/- per month as the accommodation amount. Thus, according to the learned counsel, the impugned order is just and reasonable one. Since it is an interim order, passed at the

discretion of the Family Court, the order should not be interfered with by this Court.

5. Heard the learned counsel for the parties, and perused the impugned order.

6. The learned counsel for the petitioner has pleaded that the wife is residing on her own without any rhyme or reason. It is equally pleaded that the petition for divorce has been filed on the grounds of cruelty and desertion. However, a bare perusal of the written statement filed by the wife clearly reveals that according to her she was physically and mentally tortured in her matrimonial home. Thus, prima facie, she has given valid reasons for having left the matrimonial home. Although it is true that the petitioner had filed an application for restitution of conjugal rights, but it is equally true that the said application was withdrawn by the petitioner.

7. Since the wife has prima facie shown certain valid reasons for having left the matrimonial home, since admittedly she is a professional woman as she is working in a Medical Centre, since undoubtedly, as claimed by the petitioner, she is living with her parents, it is not too far to imagine that as a

professional woman she may find it, both individually and socially, embarrassing to depend on her own aged parents. Not only parents, but even the society would expect her to stand on her two feet, and to take care of her child. Therefore, it is out of her self-respect that she would like to have her own independent accommodation. And yet, she does not have the means to have the accommodation that will match her life-style that she was used to during the married life. Therefore, the learned counsel for the petitioner is unjustified in claiming that the application filed by the wife is a clever ploy to harass the husband. One has to be sensitive to gender justice, one also has to realize that women have the right to live with dignity and self-respect, one cannot go on expecting the women to be dependent on their parents, or on their husband, and not to have a economic and social independent life. Therefore, the first contention raised by the learned counsel for the petitioner is clearly unacceptable.

8. It is, indeed, trite to state that both the Domestic Violence Act and the Hindu Marriage Act, and even Section 125 of Cr.P.C., are laws, which are in consonance with each other. Therefore, the maintenance that may be granted under the Domestic Violence Act, and the one granted under the Hindu

Marriage Act do not contradict each other. In fact, both the laws are complementary to each other. Thus, even if the wife does not seek any amount for accommodation, in her application under the Domestic Violence Act, it would not preclude or estop her from seeking the amount for her residential accommodation under another law. Therefore, the second contention raised by the learned counsel that two contradictory orders co-exist, is a fallacious arguments. Hence, it is unacceptable.

9. In the case of **Neeta Rakesh Jain** (supra), the Hon'ble Supreme Court had opined as under:-

"8. Section 24 thus provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which Section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the Section provides guideline inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income. In other words, in the matter of making an order for interim maintenance, the discretion

of the court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status, the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute."

10. A bare perusal of the impugned order clearly reveals that the factors mentioned by the Hon'ble Apex Court in the case of **Neeta Rakesh Jain** (supra) have been complied with by the learned Family Court. The learned Family Court has noted the fact that the respondent is earning about ₹46,000/- per month. According to the respondent, the petitioner happens to be a doctor and has a Master Degree in Radiology, and is having his own Radiology Centre from where he earns about ₹5,00,000/- per month. Despite the fact that this allegation was made by the respondent, the petitioner has neither denied the same in his objection, nor produced any evidence to the contrary to rebut the allegations made by the respondent. Since there was no denial, specific or otherwise, the learned Family Court was

certainly justified in relying on the statement made by the respondent that the petitioner has a substantial earning.

11. Moreover, since the respondent's application, nameiy, I.A.No.6, was dismissed by the learned Family Court, thereby denying access to the income tax returns of the petitioner, obviously the respondent did not have any means to establish his income. Therefore, considering the fact that the allegations have not been denied by the petitioner, the learned Family Court was certainly justified in accepting the allegations prima facie, and that too at the interim stage. Therefore, the contention raised by the learned counsel that the learned Family Court has not considered the relevant factors while granting the maintenance to the respondent of ₹20,000/- for accommodation, is clearly untenable.

12. Considering the fact that the respondent happens to be a professional woman, considering the fact that she was married to a doctor, considering the fact that both the parties belong to middle class, considering the fact that she is used to certain life-style, considering the fact that the rental accommodation are rather high, the granting of ₹20,000/- for

the accommodation is certainly not an exorbitant amount. It is rather reasonable one.

13. For the reasons stated above, this Court does not find any merit in the present writ petition. It is, hereby, dismissed.

**Sd/-
JUDGE**

MD