
(1989) 11 AP CK 0018

In the Andhra Pradesh High Court

Case No : C.R. No's. 1100 and 2028 of 1989

Malladi Vidyaranya

APPELLANT

Vs

Malladi Laxmi Tripura Sundari

RESPONDENT

Date of Decision : 10-11-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Hindu Adoptions and Maintenance Act, 1956 — Section 18
Hindu Marriage Act, 1955 — Section 24, 9

Citation : (1990) 1 APLJ 164 : (1990) 2 DMC 16

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : Y. Sivaramasastry and G.N. Lohitha, for the Appellant; Mehar Chand Nori, for the Respondent

Judgement

Radhakrishna Rao, J.—The petitioner in CRP No. 2028 of 1989 who is the wife of the petitioner in CRP No. 1100 of 1989 filed OP No. 55 of 1987 on the file of the Principal Subordinate Judge, Tenali as an indigent person, claiming maintenance at Rs. 2000/- per month and for Rs. 500/-for residence and for other reliefs on the ground of desertion by her husband. Pending disposal of the above OP she filed an application IA No. 1679 of 1987 u/s 24 of the Hindu Marriage Act and Section 151 CPC for interim maintenance. No oral evidence was adduced on behalf of the wife but Exs. A-1 to A-6 were marked on her behalf. On behalf of the husband, RWs. 1 and 2 are examined and Exs. B-1 and B-2 are marked. In the IA also the wife claimed maintenance at the same rate as in the main OP and in addition she claimed Rs. 15.000/-fowards legal expenses. The husband resisted the application on the ground that what has been stated in the petition is not correct and according to him except the earnings as a Lecturer, he has no other source of income, Ex. A-6 is the salary certificate. The lower Court came to the conclusion that the respondent is getting a monthly salary of Rs. 2000/-and he is also getting an amount of Rs. 550/- towards rent. Besides he has got some landed property and the income there from can reasonably be estimated at Rs.

10,000/- per annum. The Court below accordingly estimated the monthly income of the husband at Rs. 3,300/- and granted 1/5th of the total income as interim maintenance to the wife relying on a judgment in Smt. Sarojadevi v. Ashok Puri Goswami, (1987) II Civil Law Journal, 607 i.e. at Rs. 650/- towards maintenance and Rs. 150/- for residence. In addition, the lower Court also granted an amount of Rs. 2,000/- towards legal expenses. Aggrieved against the grant of interim maintenance and also legal expenses the husband filed CRP No. 1100 of 1989 and having not satisfied with the said interim maintenance the wife filed CRP No. 2028 of 1989.

2. Admittedly the marriage between the parties took place on 22-4-1984, but started living separately from 6-9-1985 because of the misunderstandings that arose between both the parties. The main allegation of the wife is that the marriage could not be consummated because of impotency of her husband. She also alleges that she was illtreated, driven out of her matrimonial house and she was also deprived of her jewellery and she was depending upon her brother. On the other hand the contention of the husband is that his wife is interested in subjecting him to harassment both physically and mentally and his source of livelihood is only as a Lecturer in the Taluq Junior College Tenali. Now in these revision petitions we are not concerned with all the allegations made by the wife and the counter allegations made by the husband in order to find out who is at fault. But suffice it to mention that the husband never stated anything about the character of his wife. As the position stands, they are residing separately. He has also not filed any application for restitution of conjugal rights as provided u/s 9 of the Hindu Marriage Act. The wife filed the suit for maintenance and for return of jewellery. She has got a light to file a separate suit in a competent Civil Court. The OP as such as filed is maintainable. Pending the suit when there are admittedly differences between the two parties and when they are admittedly residing separately the question of probing in detail further at this stage does not arise. The only question that is left for the Court is to find out whether the wife is in a position to maintain herself. If on the pleadings and on the allegations the wife is at fault and she is unchaste or bad character and deserted her husband for no cause then she is not entitled for any maintenance. But in this case as nothing is alleged about her character and the wife alleges that she was illtreated and driven out of her house and the husband denies the same it can be said that the question of reunion between the parties at this stage does not arise. Even if there is any offer by the husband it will be only an empty formality.

3. The contention of Sri Y. Sivarama Sastry, the learned counsel appearing on behalf of the husband that without a finding whether the wife is at fault or the husband is at fault, the lower Court was not justified in granting interim maintenance, is not correct. To prevent the vagrancy and to see that the wife who has no means has to maintain herself pending the dispute, the Court has to consider whether a reasonable amount can be awarded or not. In cases of this nature, maintenance to sustain the wife can be granted provided the wife has not suffered any other disability as contemplated under the Hindu Marriage Act.

4. The bone of contention of the husband is that Section 151 C.P.C. cannot be applied for granting interim maintenance. This question has been considered by a Division Bench of this Court in Gorivelli Appanna Vs. Gorivelli Setthamma, . In that case also rival contentions have been raised about the inherent jurisdiction of the Court for the grant of interim maintenance u/s 151 CPC In that case also as in this case, on behalf of the husband it was contended that the Court had no jurisdiction to grant interim maintenance in a case where the very right to maintenance was in contest and neither Section 151 CPC nor Section 18 of the Hindu Adoptions and Maintenance Act, 1956 authorised the award of interim maintenance. But on behalf of the wife it was contended that it is the inherent right of every Court u/s 151 CPC to act on the principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law and that the Court may exercise such powers as may be necessary to do the right in the course of the administration of justice. It was also contended that the grant of interim maintenance was permitted both by Section 151 CPC and Section 18 of the Hindu Adoptions and Maintenance Act. Following the decision of the Madras High Court in Hajee Mahomed Abdul Rahman Vs. Tajunnissa Begum and Another, and several decisions of the other High Courts, the Bench was of the opinion that the Court has no jurisdiction to award interim maintenance pending final adjudication of a suit in which the very right to maintenance was in contest.

5. The decision of the Madras High Court cited above was followed by the Mysore High Court in Muli Mani Sanna Basava Rajappa v. Basavanappa, AIR 1959 Mysore, 152 and by the Orissa High Court in K. Venkataratnam Vs. Kakinda Kamala, . But the Calcutta High Court in Tarani Gupta v. Gouri Gupta, 1968 Calcutta 567 distinguished Abdul Rahman's case (supra).

6. The decision of the Division Bench rendered in G. Appanna's case (supra) is no longer a good law in view of the judgment of the Supreme Court in Savitri Rawat Vs. Govind Singh Rawat, . The Supreme Court held :--

"The civil courts have inherent power to grant interim maintenance pending disposal of the suit for maintenance."

At another stage the Supreme Court pointed out :

"If a civil court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance".

7. That is a case arising u/s 125 Cr. P.C. The question in that case is whether a Magistrate can make an interim order granting interim maintenance pending the application u/s 125 Cr. P.C.

It was further held :

"Having regard to the nature of the jurisdiction exercised by a magistrate u/s 125 of the Code, we feel that the said provisions should be interpreted as conferring power by necessary implication on the magistrate to pass an order

directing a person against whom an application is made under it to pay a reasonable sum by way of interim maintenance subject to the other conditions referred to therein pending final disposal of the application."

It was also held :

"Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur, et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist) Vide Earl Jowitt's Dictionary of English Law, 1959 Edn. p. 1797. Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment."

8. The Supreme Court has accepted in principle that even though there is no provision in the Code of Criminal Procedure for granting maintenance pending the application u/s 125 Cr.P. C. but the Court can grant the same basing on the affidavit filed by the parties. The Supreme Court also upheld the right of the Civil Court to grant interim maintenance pending disposal of the suit for maintenance.

9. In Deivasigamani Udayar Vs. Rajarani Ammal, , it was held that in a suit by a wife against her husband for separate maintenance and residence u/s 18 of the Hindu Adoptions and Maintenance Act, where the relationship between the parties is admitted but the claim is contested by the husband the Court has jurisdiction to grant interim maintenance notwithstanding the absence of a specific provision in the Act. Whatever may be the ground urged by the plaintiff in support of her claim for maintenance, the status of the parties being admitted, the grant of maintenance ultimately is a matter of course. Bearing the general principles in view, namely the acts of Court including its delays ought not to prejudice and cause hardship to any party, the power to make an interim order is implicit, ancillary and a necessary corollary of the power to entertain a suit and pass final orders therein. In that case the Madras High Court has taken into consideration the cases of Gorivelli Appanna Vs. Gorivelli Setthamma, , Nemai Chand Jain Vs. Smt. Lila Jain, and Hajee Mahomed Abdul Rahman Vs. Tajunnissa Begum and Another, .

10. If there is no provision of law permitting the Court to grant interim maintenance, then whether the power to grant interim maintenance can be invoked under its inherent powers. The law was laid down in unambiguous terms in (1882) ILR 5 All. 163 that every procedure is admitted unless it is forbidden by law. The procedure is always designed to subserve the purpose of justice and is always aimed at enhancement of rendering substantial justice. Grant of maintenance allowance is always aimed at preserving the existence of an individual who is supposed to be in a position to support himself. Though there is no express provision of law in the Hindu Adoptions and Maintenance Act, 1956

for grant of interim maintenance allowance yet there is no prohibition against such an interim relief being granted. As held in *D. Udayar v. Rajarani Ammal* (supra), the power to make an interim order is implicit, ancillary and a necessary corollary of the power to entertain a suit and pass final orders thereon.

11. This view has been followed by the Rajasthan High Court in *Indar Mal Vs. Babu Lal*, wherein the minor claimed interim maintenance on the strength of registered adoption deed. The High Court held that the son is entitled to the interim maintenance.

12. The Madras High Court in *Subbayya Maniyagarar v. Kandaswami*, AIR 1935 Madras 105 considered the question whether interim maintenance can be granted to the minors. On the principles of natural justice, the learned Judge found that the minor plaintiffs who are admittedly entitled to maintenance should not be allowed to starve while their partition suit is going on, and an order allowing the maintenance on a petition for their maintenance filed in the partition suit on their behalf is within the jurisdiction of the court u/s 151 C.P.C.

13. The Full Bench of the Orissa High Court in *Khadal Penthi Vs. Hulash Dei and Another*, while answering the question framed by it viz., whether the Court would be entitled to grant interim maintenance in a case where the marital relationship is denied; and whether in the absence of any provision in either of the, two Acts, namely "The Hindu Adoptions and Maintenance Act" and "The Hindu Marriage Act", the Court can exercise jurisdiction u/s 151 C.P.C. to grant the interim relief of awarding maintenance held as follows :

"From the ratio of the three decisions of this Court mentioned above, it is clear that this Court has been consistently taking the view that in a suit filed by the wife for recovery of maintenance from her husband, the Court has power u/s 151 of the CPC to grant interim maintenance during the pendency of the suit, but exercise of that power will depend upon facts and circumstances in each case. Some of the relevant matters to be considered are whether there are prima facie materials to establish marital relationship and whether the wife is able to make out a case for grant of interim maintenance. In taking this view, this Court has not accepted the extreme views taken by some other High Courts one being that the Court has no power at all u/s 151 to grant interim maintenance in a suit for recovery of maintenance and the other that the wife has the right to get interim maintenance notwithstanding the denial of marital relationship between her and the defendant."

14. *Rama Rao, J* , in an unreported judgment in CRP Nos. 454 and 671 of 1986 dated the 24th April, 1987 held that the decision of this Court in *Appanna's* case (supra) cannot be considered as good law. The learned Judge also followed the decision of the Supreme Court in *Savitri v. Govind Singh Rawat* (supra).

15. In *I.T.O. v. Mohammad Kunhi* AIR 1969 SC 430 the Supreme Court held that the power to grant stay by the Income Tax Appellate Tribunal is incidental or ancillary to appellate jurisdiction though there is no provision enabling it to grant

stay. The power to grant interim relief is implicit and inbuilt in the grant of main relief and therefore the Court has ample power to grant interim maintenance pending the disposal of the main application for maintenance.

16. Following the ratio enunciated by the Supreme Court and the other High Courts, I am clearly of the opinion that in view of the language employed in Section 151 C.P.C. i.e.,

"Section 151; Saving of inherent powers of Court : Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

The Court has inherent jurisdiction to grant interim maintenance u/s 151 CPC pending disposal of the suit for maintenance.

17. With regard to the quantum of maintenance, the lower Court has taken into consideration that 1/5th of the claim would be the reasonable amount for the grant of interim maintenance. Perhaps, the lower Court might have been led away by the provisions of Section 36 of the Indian Divorce Act. A Division Bench of this Court in Katta Raghavulu v. Katta Bharathamma 1975 ALT 357 dissenting from the view expressed by Rajasthan and Orissa High Courts and the observations in Mulla's treatise on Hindu Law repelled the contention of the appellant in that case that the respondent should not have been awarded more than one-fifth of the income towards interim maintenance. No where a restriction has been placed either under the Hindu Marriage Act or Hindu Adoptions and Maintenance Act that one-fifth of the net income of the husband has to be granted. The principle of granting one-fifth of the net income of the husband cannot be imported in cases where we consider in a civil suit for maintenance. The parties in this case are admittedly governed by the Hindu Law and there is a valid marriage and the rate of maintenance only is in dispute. Generally the wife exaggerates the income of her husband while the husband tries to show lesser income and more responsibilities like maintenance of aged parents, unmarried brothers and unmarried sisters. When such differing claims are there, it is for the Court to strike a balance and see that reasonable maintenance shall be granted by taking into account the income potentialities of the husband. Unless it is found that excessive amount has been granted, the High Court should not interfere with the quantum. In this case, leaving alone the landed property, the husband is getting Rs. 2000/- as salary and Rs. 500/- as rent from the house. The husband has to maintain a separate establishment but whereas the wife in these circumstances may stay under the protection of her father or brother or other relations. The husband did not allege that the wife is earning something. The quantum must be decided on the facts of each case and it should in no way be a burdensome for the husband. The income potentialities of the husband, the status of the parties and their background prior to the marriage are some of the factors that have to be taken into consideration at the time of determining the quantum of interim maintenance. The interim maintenance granted shall not be

taken into consideration at the time of the final disposal of the case. Therefore, considering the above factors, the interim maintenance granted by the lower Court at Rs. 650/- per month towards maintenance and Rs. 150/- towards residence is neither too low nor too excess but it can be said that it is the bearest minimum that can be granted.

18. Sri Y. Sivarama Sastry, the learned counsel appearing for the husband, contended that the lower Court should not have granted interim maintenance from the date of the filing of the petition. The parties approach the Court after they fail in all their attempts for an amicable settlement. By the time they approached the Court, sufficient time might have already been spent and after their separation difficulties also might have been faced by the wife for sustenance in life. In this case since the marriage is admitted and both husband and wife are living separately and when the Court comes to the conclusion that the wife is entitled for interim maintenance the wife should not be allowed to starve while the petition is pending. The amount that is being granted is only a temporary measure or tentative arrangement to see that the wife may sustain to prosecute her case. The acts of Court ought not to prejudice or cause hardship to any party. The power to make an interim order is implicit and in-built in the grant of main relief. The normal practice that can be followed by the Court while granting interim maintenance pending disposal of the suit or an application filed u/s 125 Cr.P. C. is to grant interim maintenance from the date of the filing of the petition itself. It is relevant to notice Section 125 (2) of the Code of Criminal Procedure which reads :

"125(2) Such allowance shall be payable from the date of the order, or, if so ordered from the date of the application for maintenance."

When a provision has already been made for awarding maintenance in the Criminal Procedure Code, definitely the same reasoning has to follow and in case the Court deviates from this provision, it has to give sufficient and cogent reasons. Therefore, in this case, the wife is entitled for the interim maintenance from the date of the application.

19. The revision petitions are accordingly dismissed. No costs.