

(1995) 01 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1573 of 1991

Parchuri Rajya Lakshmir

APPELLANT

Vs

Parchuri Viswa Sankara Prasad

RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(2)
Hindu Marriage Act, 1955 — Section 24, 25, 9

Citation : AIR 1995 AP 147 : (1995) 1 ALT 628 : (1995) 1 APLJ 319 : (1995) 2 CivCC 223

Hon'ble Judges : P. Ramkrishnamraju, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : P. Raja Rao, for the Appellant; A. Ramanarayana and A. Panduranga Rao, for the Respondent

Judgement

1. In this Civil Revision Petition, the petitioner questions the order of the learned Subordinate Judge at Machi-lipatnam in I.A. No. 564 of 1985 in O.P. No. 127 of 1984 dated 12-3-1991. -

The petitioner is the wife of the respondent. The respondent filed the said O.P. No. 127 of 1984 for restitution of conjugal rights and the petitioner herein filed I. A. No. 564 of 1985 for interim maintenance and expenses to prosecute and defend, in the said O. P. The learned Subordinate Judge allowed the said f.A. granting the petitioner herein maintenance at Rs. 150/- per month instead of Rs. 200/- per month as claimed by her and also Rs. 500/- towards legal expenses. The learned Subordinate Judge granted the said interim maintenance only from 1-12-1990, even though the said I. A. was filed in February, 1985. In this C.R.P. the petitioner contends that she is entitled to grant of interim maintenance from the date of the filing of the I.A. i.e., from February, 1985. She also contends that she is entitled to interim maintenance at Rs. 200/- per month.

The learned counsel of the respondent submits that the said O.P. was dismissed for default on 28-6-1991 and that therefore the C.R.P, has become infructuous

inasmuch as there cannot be any claim for interim maintenance, once the main O.P. itself is no longer pending. He relies on the judgment of Justice Radhakrishna Rao in "Donti Reddy Chinna Venkat Reddy v. Donti Reddy Vijaya Laxmi, 1990 (1) AWR 374 wherein the learned Judge, in a very short order held as follows :

"The O.P. was filed by the husband for dissolution of marriage. An interim order was "passed in the O.P. granting maintenance. But the interim order has not yet been implemented. Subsequently, the O.P. was dismissed without any direction. Now the question that arises for consideration is whether the order passed in the 1. A. pending disposal of the O.P. will be valid after the dismissal of the O.P. ? If the maintenance order has been passed in the O.P. itself while dismissing the O.P., the wife would be entitled to execute the same. The moment the main O.P. is dismissed, the interim order passed in I.A. during the pendency of the O.P. will lose its effect. Hence, the contention of the petitioner that after the disposal of the O.P. the interim order in I. A. need not be implemented as the order has lost its effect is correct."

The learned counsel for the petitioner submits that in CM.P. No. 7112 of 1991, this Court directed the respondent herein to pay Rs.250/- to the petitioner towards filing expenses and advocate's fee on or before 7-2-1993 and that the respondent had not paid the same till now, and that therefore the respondent cannot be heard till the said sum is paid. He also relies on the judgment of Justice Radhakrishna Rao in "Malladi Vidyaranya v. Malladi Laxmi Tripura Sundari", 1990(1) AWR 123 in support of his contention that the petitioner is entitled to payment of interim maintenance from the date of filing of the application for grant of interim maintenance. The learned Judge has observed in Vidya-ranya's ((1990) 1 AWR 123) case as follows :

"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."

The learned counsel for the petitioner submits that the same reasoning and

rationale should be applied also to cases u/s 24 of the Hindu Marriage Act, 1955. He also relies on the judgment of a learned single Judge of Rajasthan High Court in Bhanwar Lal Vs. Smt. Kamla Devi, , which is a case arising u/s 24 of the Hindu Marriage Act, 1955 wherein it has been held that interim maintenance should be awarded to the indigent spouse from the date when the application u/s 24 of the Act is actually moved, unless there are justifiable grounds for not granting the same from that date. In "Bhanwarlal"s case, the learned single Judge did not agree with the view of the Delhi High Court in Chitra Lekha Vs. Ranjit Rai, that an application for interim maintenance u/s 24 of the Hindu Marriage Act, 1955 can be considered only during the pendency of the main O.P. and if the O.P. itself is disposed of, without an order being passed in the application for maintenance, the said application cannot be continued and no order for interim maintenance and expenses can be passed thereafter. But a Division Bench of Mysore High Court has taken a different view in "N. Subrahmanyam v. Mrs. M. G. Saraswathi", AIR 1964 Mys 38 and has held that the right to interim maintenance or expenses if established, cannot be delayed by allowing time to lapse and the main proceedings to come to an end. The same view is taken by a learned single Judge of Punjab and Haryana High Court in Amrik Singh Vs. Narinder Kaur, . He held as fellowship. 212):

"It do not think that the interim maintenance and litigation expenses could be denied to the applicant on such a ground when the application had been filed during the pendency of the main proceedings and it is the court which delayed its decision thereon. If the relief could not be denied in the above situation then surely the applicant would not be denied the same relief even after the conclusion of the main petition."

These decisions clearly support the view that the application for interim maintenance and expenses u/s 24 does not lapse on the termination of the main proceedings if no order is passed therein at the time when the main petition itself is closed. The petitioner would be entitled to maintenance and expenses unless there are no grounds for grant of the same, for the period during which the main O.P. has been pending. If that is so, the order granting interim maintenance and expenses also does not get extinguished, the moment the main O. P. is dismissed or disposed of. I am therefore prima facie of the view, that the decision of Justice Radha-krishna Rao in "Donti Reddy Chinna Venkat Reddy"s case ((1990) 1 AWR 374) that the moment the main O.P. is dismissed, the interim order passed in I.A. during the pendency of the O.P. will lose its effect and that it has no longer any efficacy for all purposes even in respect of the period during which the O.P. has been pending, is not correct, and that it requires reconsideration, and that an authoritative pronouncement clarifying the position by a Division Bench is necessary for giving a clear guidance to the lower Courts.

I therefore direct this C.R.P. to be posted before a Bench. Appropriate orders in that regard may be obtained from my Lord the Chief Justice.

Office is directed to post this matter before a Division Bench at an early date.

Shri Lingaraja Rath, J.

This Revision has been referred to us under the orders of the learned single Judge, on the question as to whether an order passed u/s 24 of the Hindu Marriage Act, 1955, hereinafter referred to as "the Act", granting interim Maintenance and litigation expenses to the wife in an application filed by the husband u/s 9 of that Act for restitution of conjugal rights, survives independently giving the wife a right to claim the same though the application u/s 9 is dismissed either for non-prosecution or otherwise.

2. Though the case is listed for "ex parte orders", yet Mr. R. Ramanarayana has appeared and on his request to be heard, we have heard both the sides.

3. The facts leading to the case are that the respondent had originally filed O.P. 36/ 83 for restitution of conjugal rights and in that the petitioner filed I. A. 629/83 claiming interim maintenance and litigation expenses. The O.P. was dismissed as Section 9 of the Act had been declared unconstitutional by this Court. Later on, on the Supreme Court reversing the decision of this court, the respondent again filed O.P. 127/84 claiming the very same relief. The petitioner filed LA. 564/84 in that case in February, 1985 for interim maintenance and litigation expenses. The application was rejected holding the property alleged as belonging to the respondent is not his individual property, but self-acquired property of his father. As against that C.R.P. No. 2513 of 1989 was filed in this Court which was disposed of on 3-12-1990 declaring the property to be the joint family property with the respondent having a share in it, and remanding the case to the trial court for fixing the quantum of interim maintenance payable to the petitioner. The learned subordinate Judge fixed the interim maintenance at Rs. 150/- and the litigation expenses as Rs. 500/-, even though, in the application, the petitioner claimed for Rs. 200/- as interim maintenance. Aggrieved by the order, she has preferred the present revision. During the pendency of the revision the O.P. 127/84 has been dismissed for default on 28-6-1991. Because of such fact, the submission was urged on behalf of the respondent at the hearing of the revision before the learned single Judge that the original petition itself having been dismissed, the question of payment of interim maintenance does not arise. In this revision we are confined only to the question of interim maintenance as submitted by the learned counsel for the petitioner.

4. The learned single Judge disagreed with the view expressed by another learned single Judge of this Court in *Donti Reddy Chinna Venkat Reddy v. Donti Reddy Vijaya Laxmi*, 1990 (1) AWR 374 who held that with the lapse of the original proceeding, the interim order does not survive, and hence referred the matter to the decision by a Division Bench.

5. For appreciation of the question raised, Section 24 may be extracted for ready reference :

"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 to the petitioner the expenses of the proceeding, and monthly during 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."

An analysis of the provision shows that depending on the eligibility as visualised under the section to the benefits under it, either the wife or the husband can be directed to pay the other side : (1) the expenses of the proceedings, and (2) reasonable sum to be paid monthly during the pendency of the proceeding, "for his or her support. The monthly sum so paid is obviously towards maintenance during the proceeding. The court adjudicates the amount necessary and allowable to the respondent as the maintenance and support and directs the respondent to pay the same. Hence what is determined by the court is actually the amount which becomes payable to the applicant for his or her support. The words "during the proceeding" only indicate the period till which the payment is to be directed. The right to get the sum, as is directed, is independent of the continuance or otherwise of the proceeding itself. But the monthly sum so fixed would not continue to be chargeable beyond the conclusion of the proceeding, but the liability to pay, as determined, is independent of the continuance of the proceeding. The words do not have any other meaning except that. Hence the responsibility to pay the maintenance fixed independently survives the closure or lapse of the proceeding and can be proceeded with for enforcement by the party in whose favour the order has been made. This conclusion is irresistible since the event for payment of interim maintenance is the initiation of the proceeding against the other side in which he or she is made to appear and defend himself which necessarily involves incurring expenditure for the purpose, and if he or she has no independent source of income sufficient for support, the law casts responsibility on the other side having regard to the respective incomes of the parties, to pay the maintenance. The provision is independent of the provisions of Section 25 of the Act or the provisions of Hindu Adoptions and Maintenance Act or of Section 125 of the Code of Criminal Procedure.

6. To accept the other view that even though interim maintenance has been adjudicated and directed to be paid yet the order and consequently the liability to pay lapses with the closure of the proceeding for whatsoever reason, will lead to the fallacious and anomalous position that it will be possible for either of the spouses to initiate proceedings against the other for the sheer purpose of harassment and after continuing the same for some time so as to ensure the appearance and participation by the either side, get the proceeding lapsed when the interim order is made so that the party who is unable to maintain herself/himself and who has also incurred expenses for litigation has no remedy to realise the payments, without any fault of his or her. Section 24 could not have meant such a fallacious situation to prevail.

7. We find ample support for the view taken by us in decisions of different courts in India. As early as in 1956 the Madras High Court decided in Mahalingam Pillai Vs. Amsavalli, that -

"granting alimony pendente lite could not only be executed by the wife but where these payments are made a condition precedent for the taking up of the trial or the petition or hearing of an appeal therefrom and if these are not complied with, the petition or appeal can be dismissed."

8. The Mysore High Court observed in N. Subramanyam v. Mrs. M. G. Saraswathi, AIR 1964 Mys 38 that (at p. 39) -

"The fact that the duration of the proceeding was short, there being no contest, in itself is no reason for a deferring decision on the wife's application to the final stage. Nor can it be said that since the proceedings had themselves terminated there was no occasion to grant interim maintenance or expense. The right to those items, if established cannot be defeated by allowing time to elapse and the pendency of the proceedings to end. The party concerned may have provided herself with the requisite means in some other way and she is entitled to reimburse herself or to repay others if she has raised the means from others. No limitation is placed u/s 24 on the minimum amount to be granted as interim maintenance."

The court further went on to say (at p. 39) :

"There is no warrant for limiting its commencement to the date on which the application for the grant of interim maintenance was made by the wife. She should be awarded interim maintenance from the date of the receipt of notice of the husband's divorce petition up to the date of the termination of the proceedings."

9. Similar view was expressed in P.P. Krishnan Vs. J. Thailambal, .

"Section 24 of the Hindu Marriage Act contains no limitation that an order for interim maintenance and expenses made thereunder will cease to have force if the husband against whom the order is passed chooses to withdraw the proceedings for nullity of marriage initiated by him. When the husband chooses to drag the wife to the Court by filing a proceeding and if it is shown that the wife has no independent income, the husband must necessarily provide her with interim maintenance and the necessary expenses and he cannot be allowed to wipe out this liability after the order is passed by choosing to withdraw from the petition."

10. In Amrik Singh Vs. Narinder Kaur, the Punjab & Haryana High Court held that even if the main proceeding is brought to conclusion while the application u/s 24 was pending, yet the court has jurisdiction to decide and grant interim maintenance.

11. The same view was expressed in Bhanwar Lal Vs. Smt. Kamla Devi, .

12. In view of the overwhelming support to the view taken by us, we are unable to endorse the views expressed by the learned single Judge in *Donti Reddy Chinna Venkat Reddy* ((1990) 1 AWR 374) *supra*, where the question was not examined from the angle discussed by us. The order was also cryptic with only the observation that the moment the main O.P. is dismissed, the interim order passed in I. A. during the pendency of the O.P. will lose its effect.

13. Another earlier decision of this court has also been brought to our notice in *Emani Venkateswarlu v. Emani Padmavathi*, (1986) 2 AP LJ 134 where also similar cryptic view was taken of an order u/s 24 that when once the proceedings comes to a close, the court has no jurisdiction to pass an order on Section 24 application.

14. There is the decision of the Delhi High Court in *Chitra Lekha Vs. Ranjit Rai*, taking the same view as in *Emani Venkateswarlu*, (1986) 2 APLJ 134 (*supra*). For the reasons discussed earlier the view does not commend itself to us.

15. In the result, the decisions in *Emani Venkateswarlu v. Emani Padmavathi*, (1986) 2 APLJ 134 and *Donti Reddy Chinna Venkata Reddy v. Donti Reddy Vijaya Laxmi*, (1990) 1 AWR 374 are overruled. The case be listed before the appropriate single Bench to be dealt with on merits. Since the matter is old and relates to maintenance, we direct that the case be listed on the 20th December, 1994 before the learned single Judge.

16. Wife is the petitioner in this case. The revision has been filed questioning the order of the learned Subordinate Judge, Machi-lipatnam fixing interim alimony u/s 24 of the Hindu Marriage Act, 1955 (for short "the Act") at Rs. 150/- per month and directing payment of sum of Rs. 500/- towards the litigation expenses pending the main O.P., filed by the husband for restitution of conjugal rights. The respondent is the husband. He filed O.P. No. 36 of 1983 for restitution of conjugal rights in the first instance. In the said application, the petitioner-wife filed I. A. No. 629 of 1983 claiming interim maintenance and litigation expenses u/s 24 of the Act. Having regard to the judgment of this Court declaring Section 9 of the Hindu Marriage Act as unconstitutional, the said O.P. was dismissed. The said judgment of this Court declaring Section 9 as unconstitutional was overruled by the Supreme Court. In view of the above, the respondent-husband again filed O.P. No. 127 of 1984 u/s 9 of the Act for restitution of conjugal rights. Pending the said O. P., the petitioner-wife filed I.A. No. 564 of 1985 in February, 1985 claiming interim maintenance at the rate of Rs. 200/- per month and litigation expenses of Rs. 700/-. The application was dismissed on the ground that the property was shown to be the self-acquired property of the father of the respondent-husband and that he had no property. The said order was the subject-matter of C.R.P. No, 2513 of 1989 in this Court. The said C.R.P., was allowed by an order dated 3-12-1990 wherein it was held that the property was the joint family property in which the respondent-husband was having one-fifth (1/5th) share. In view of the said finding, the matter was remanded to the trial Court for fixing the quantum or maintenance. After remand, after hearing both parties and

on consideration of the material placed before the court, the learned subordinate Judge fixed the interim maintenance at Rs. 150/- per month with effect from 1-12-1990 and further directed the respondent to pay Rs. 500/- towards the litigation expenses. Questioning the said order, the present civil Revision Petition is filed by the wife.

17. Shri P. Raja Rao, the learned Counsel appearing for the petitioner-wife contended that having regard to the admitted fact that the petitioner's share in the joint family property comes to Ac. 1-00 cents of wet land and Ac. 0-44 cents of dry land and taking into consideration the income thereon, the sum of Rs. 200/- per month claimed by the wife as interim alimony till the disposal of the O.P., is reasonable and that the order fixing the maintenance at a sum of Rs. 150/- per month only is not sustainable. He further contended that amount of the interim alimony should be directed to be paid with effect from February, 1985 i.e. the date of filing of I.A. No 564 of 1985.

18. Shri A. Ramanarayana, the learned counsel appearing for the respondent-husband strenuously contested the above contentions and stated that on consideration of the material on record, the income from the lands in question will not be more than Rs. 4,000/- and therefore, a sum of Rs. 150/- per month fixed by the trial Court is reasonable and there is no reason to increase the said amount. He also stated, across the Bar, that a suit is pending at the instance of the daughter for maintenance and that another suit at the instance of the daughter for partition. The quantum of maintenance can be finally gone into as these proceedings are only with reference to the interim alimony till the disposal of the O.P., filed by the respondent-husband u/s 9 of the Act, this Court should not interfere with the order under revision.

19. Heard the learned counsel on both sides. Perused the records. Firstly, it should be noted that the I.A., was filed in February, 1985 seeking interim alimony as well as payment of litigation expenses. The learned Subordinate Judge, while fixing the date for payment of the amount has not given any reasons whatsoever. He merely fixed the amount to be paid at the rate of Rs. 150/- per month with effect from 1-12-1990 i.e., the date on which this Court remanded the matter back to the trial Court for fixing the quantum of maintenance. In cases like this, where applications are filed u/s 24, normally, there will be an order directing payment of the sum of interim alimony fixed by the Court with effect from the date on which the main O.P., was filed or from the date on which the I.A., seeking interim alimony was filed. Therefore, in view of the fact that the interim alimony has to be paid from the date on which the I.A. No. 564 of 1985 has been filed. Accordingly, the amount of interim alimony will have to be paid by the respondent husband with effect from 1-2-1985.

20. Now coming to the fixation of quantum of interim alimony also, I feel that fixing a paltry sum of Rs. 150/- per month, having regard to the material on record, is not sustainable. It is not possible for any single soul, much less wife and daughter, to sustain on the meagre sum of Rs. 150/- per month. However, I

have taken into consideration the material on record to come to the conclusion in this regard, it has to be noted that there is no dispute with regard to the extent of the land. The one-fifth (1/5th share) of the respondent-husband comes to Ac. 1-00 cents " of wet land and Ac. 0-44 cents of dry land roughly. It is stated that in the wet land, traditional crops of paddy and pulses are being raised for the first and second crops while commercial crops are raised in the dry land. Taking the average prices from 1985 till the disposal of the O.P., we can safely put the value of the paddy at Rs. 200/- per bag. If that is so, the net income can be arrived, after excluding the expenses, at Rs. 3,600/- as a minimum. Like-wise, on the dry land also, the income will be arrived, after excluding the expenses, at Rs. 2000/- to Rs. 2,500/- per annum. Thus the total net income on the land roughly works out to Rs. 5,600/- to Rs. 6,000/- per annum. If a sum of Rs. 200/- per month is fixed as interim alimony to the wife, it comes to Rs. 2,400/- per annum which, I am of the opinion, is reasonable, having regard to the income arrived at above. There is no hard and fast rule in arriving at the quantum of income. Apart from the material on record, some guess work is also involved in this regard. This is not final and it will be subject to fixation of the maintenance by a competent Court in a regularly instituted proceedings and this amount is only payable between 1-2-1985 to 1-12-1990, i.e., the date on which the O.P., was dismissed. Having regard to the above, I am of the view that a sum of Rs. 200/- per month can be fixed as interim alimony under S. 24 of the Act as claimed by the wife.

21. Accordingly, the civil revision petition is allowed fixing the interim alimony at the rate of Rs. 200/- per month payable with effect from 1-2-1985 to 1-12-1990. But in the circumstances, there shall be no order as to costs.

22. Petition allowed.