

(2007) 12 KAR CK 0020

In the Karnataka High Court

Case No : Revision Petition Family Court No. 84 of 2007

Srinivasa Gowda

APPELLANT

Vs

H.J. Leelavathi

RESPONDENT

Date of Decision : 04-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 127

Citation : (2008) 1 KarLJ 152 : (2008) 1 KCCR 302

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : H.N.M. Prasad, for the Appellant; Pritha Srikumar, for Indus Law, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This is a case where the learned Judge of the Court below has passed a right order but given wrong reasons in support of the right order.

2. This revision petition u/s 19(4) of the Family Courts Act, 1984 is by the husband who had put up a defence to avoid payment of maintenance in favour of the respondent-wife in terms of an earlier order of the Court below when that order was sought to be enforced for recovery of the amount by pointing out that there were some subsequent developments; that the husband had obtained decree for restitution of conjugal rights in a proceeding before the Competent Court in MC No. 17 of 2002 in terms of the judgment dated 17-1-2006 passed by the Court of Civil Judge (Senior Division), Channarayapatna and therefore the petitioner-husband was not liable to pay maintenance amount but which defence has been found to be not a valid defence by the Court below and the Court below having ordered payment of maintenance as had been determined earlier, the present revision petition.

3. Notice had been issued to the respondent-wife. Respondent is represented by

Counsel Mrs. Pritha Srikumar.

4.1 I have heard Sri Prasad, learned Counsel for the petitioner and Smt. Pritha Srikumar, learned Counsel for the respondent. Sri Prasad, learned Counsel for the petitioner would urge several contentions to get over the order dated 19-2-2007 passed in C. Misc. No. 283 of 2004 by the Court of Civil Judge (Junior Division) and Judicial Magistrate First Class, Sri Rangapatna, that it is settled law that a husband in whose favour a judgment and decree for restitution of conjugal rights has been passed by the Competent Court is not liable to pay any maintenance in favour of an unwilling wife who refuses to stay with him and in the light of the settled law, the learned Judge of the Court below should have necessarily declined to enforce the order of maintenance passed in favour of the wife in terms of earlier order dated 30-6-2004 passed in C. Misc. No. 218 of 1996; that the Court below has failed to take notice of the decree for restitution of conjugal rights; that it virtually amounts to acting contrary to this judgment and decree etc.

4.2 Smt. Pritha Srikumar, learned Counsel for the respondent, on the other hand, submits that the law is not as sought to be interpreted; that even when there is a decree for restitution of conjugal rights, the wife if she has justifiable grounds not to join the husband, is nevertheless not deprived of maintenance in her favour and she can claim maintenance, and at any rate, the revision petition could not have sought for relief of modification of the earlier order of maintenance in a petition filed by the wife for enforcement of the order and if at all there was any scope for the petitioner-husband for seeking such modification of the earlier order he should have come up by way of an independent petition, in which event, the Court would have an occasion to examine all aspects; that such object cannot be achieved by the petitioner through an application in the petition filed by the wife for enforcement of the order that had already been passed by the Court below and therefore irrespective of the reasons assigned by the learned Judge of the Trial Court, that request of the husband having been rightly rejected, no interference is called for.

5. Though Sri Prasad, learned Counsel for the petitioner submits that he is supported by weighty authorities, it is not necessary to examine such authorities for the purpose of resolving such legal position in this petition for the reason that the petitioner, assuming in law is entitled to rely in support of his contentions, such authorities and legal position, that can be done only in a properly laid petition u/s 127 of the Criminal Procedure Code, 1973, presented before the Court below which had passed an order for maintenance u/s 125 of the Criminal Procedure Code and bringing to the notice of that Court all such developments and grounds to justify either for modification or cancellation of the order. Such course of action not having been resorted to by the petitioner and if the learned Judge of the Trial Court has rejected the request, I do not find any illegality or error in rejecting such request. It was not necessary for the Trial Court to go into the merits of that request as that should have come by way of an independent

petition and not through an application in a pending proceeding for enforcement of the order u/s 125 of the Criminal Procedure Code.

6. It is for this reason, this petition is dismissed.

7. It is open to the petitioner to independently pursue the cause, if any, seeking for modification of the earlier order of maintenance, if any grounds are available to the petitioner in accordance with law.

8. However, Smt. Pritha Srikumar, learned Counsel for the respondent, submits that the petitioner has not even paid the maintenance in terms of the order dated 30-6-2004 passed in C. Misc. No. 218 of 1996 and it was for this reason, it became necessary for the respondent to seek for enforcement of that order by filing C. Misc. No. 283 of 2004 before the Court below and it is a fit case where the petition should be dismissed with costs as the petitioner has no bona fides to prosecute this petition.

9. Though this aspect is disputed by Sri Prasad, learned Counsel for the petitioner, it is only proper that the petitioner who has dragged the respondent to this Court should compensate the respondent with cost which is quantified at Rs. 3,000/- payable in favour of the respondent.

10. This petition is dismissed levying cost of Rs. 3,000/- payable to the respondent which amount if not paid to the respondent or deposited before the Court below within four weeks can also be realised as part of maintenance before the Court below.