
(1996) 07 AP CK 0062

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 713 of 1995

Yellapu Satyanarayana

APPELLANT

Vs

Yellapu Vijayalakshmi and Another

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20

Citation : (1996) 3 ALT 451 : (1997) 3 CivCC 304 : (1997) 1 CivCC 555

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : V. Ajay Kumar, for the Appellant; D. Ramalinga Swamy, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—Respondents filed a suit against the petitioner in forma pauperis in O.P. No. 184 of 1993 on the file of the I Additional Sub-Judge, Visakhapatnam. The said suit was instituted under Order 7 Rule 1 of CPC and under Order 33 Rule 1 of CPC seeking to recover the past and the future maintenance and such other relief, against the petitioner. First respondent is the wife and the second respondent is the minor son of the petitioner. The suit was filed under the provisions of the Hindu Adoptions and Maintenance Act, 1956 (for short "the Act")-

2. The respondents also filed an application in I.A. No. 125 of 1994 u/s 151 of CPC seeking interim direction for payment of Rs. 1,500/- per month as maintenance to the respondents (Rs.1,000/- to the first respondent and Rs. 500/- to the second respondent) and also Rs. 750/- towards monthly house rent and a further sum of Rs. 2,000/- towards legal expenses. In the said petition filed by the respondents, it was categorically averred that ever since the year 1991, the petitioner being the husband of the first respondent has neglected to maintain her and her son as a result of which they were forced to depend upon

the father of the first respondent who is a small employee. It was further averred that the petitioner is an employee in Visakhapatnam Steel Plant and is getting a salary of more than Rs. 4,000/-.

3. The said application was resisted by the petitioner herein on the ground that the said application was ill-conceived inasmuch as when a suit is filed under the Hindu Adoptions and Maintenance Act, 1956 for maintenance, there is no provision in the said Act for granting interim maintenance and as such the lower Court ought not to have entertained the said application filed u/s 151 of CPC.

4. The lower Court, however, rejected the contention of the petitioner and directed him to pay a sum of Rs. 500/- to the first respondent and Rs 300/- to the second respondent per month from the date of filing of the application and also directed to pay a sum of Rs. 1,000/- towards legal expenses by an order dated 3-2-1995. This is the order which is challenged in this revision.

5. The main contention raised by Sri Ajay Kumar, counsel for the petitioner is that when a suit is filed for recovery of past and future maintenance under the Act, in the absence of any provision contemplated under the said Act for granting interim maintenance, the Lower Court ought to have rejected the application filed u/s 151 of CPC. In support of his contention, he relied on a decision of a Division Bench of this Court in Gorivelli Appanna Vs. Gorivelli Setthamma, . Counsel states, in view of the law laid down by the Division Bench of this Court and in view of the provisions of the Act, when there is no provision to grant interim maintenance, an application u/s 151 of CPC seeking interim maintenance ought not to have been entertained by the Lower Court.

6. On the contrary, Sri D. Ramalinga Swamy, counsel for the respondents contends that even if there is no provision made in the Act, the inherent powers vested in the Civil Courts u/s 151 of CPC could be invoked by a party seeking appropriate relief in a given set of circumstances. Counsel states, the purport of a provision is to be interpreted in such a way to assist the needy in crisis and therefore, urges this Court to reject the contention of the petitioner. He relied on a decision of the Supreme Court in Savitri v. Shri Govind Singh Rawat 1985 (2) ALT 105 : 1985 (3) APLJ 22 and also another decision of a learned Single Judge of this Court in V. Satyanarayana v. V. Venkataratnam 1987 (2) ALT 270 : 1987(2) APLJ 236. Counsel states that in the decision cited (2) supra, proceedings u/s 125 of Cr.P.C. fell for interpretation before the Supreme Court on the question of interim maintenance pending main application filed u/s 125 of Cr.P.C. The Supreme Court interpreted the provision to say even if no provision is made for interim maintenance. Criminal Court would be competent to grant interim maintenance in a given set of circumstances. Counsel also stated that the Single Judge of this Court in the decision (3) cited supra has held that in view of the law laid down by the Supreme Court in the decision (2) cited supra, the implication of the decision of the Division Bench of this Court cited (1) supra is that it no more holds the field.

7. In the wake of these divergent submissions and in the light of the decisions cited before me, this Court is called upon to examine whether the Lower Court is competent to entertain an application seeking for interim maintenance, filed by these respondents u/s 151 of CPC pending decision in the final proceedings in O.P. No. 184 of 1993.

8. It is true that under the Hindu Adoptions and Maintenance Act, 1956, there is no provision contemplated for providing interim maintenance. It is also true that a Division Bench of this Court in the decision (1) cited supra has held that when the relief in the main O.P. itself is for maintenance, pending consideration of the main O.P., no interim maintenance could be granted u/s 151 CPC, in an interlocutory application. I do not think, this decision holds good in view of the decision of the Supreme Court in the decision (2) cited supra.

9. In my considered view, legal rigidity shall give way to legal necessity. Legislature may not visualise and provide cure for all the short-comings. It therefore, becomes necessary for the judiciary to reflect the mind of the Legislature and lend assistance to a party in need in an appropriate situation. Legal rigidity in the sense, absence of any provision to render appropriate assistance in a given set of circumstances which in the opinion of the Court, comes on its way to render assistance and such absence of provisions shall not deter the Courts from rendering assistance to the needy in appropriate circumstances. Legal necessity in the sense, the requirement in an appropriate case shall prevail over the legal rigidity. That shall be the endeavour of law.

10. As discussed by me, though there is no provision to seek interim maintenance in a proceeding filed for recovery of past and future maintenance under the Hindu Adoptions and Maintenance Act, when a party files an application u/s 151 of CPC invoking the inherent powers of the Courts, I do not think, Courts are prevented from rendering assistance to a party. The inherent powers vested in Courts u/s 151 of CPC are over and above the powers already available to a Court under various provisions of Civil Procedure Code. Even though, no specific provision is made in the said act for granting interim maintenance, I am inclined to say, the inherent powers of the Court are available to a party in need and on a petition filed u/s 151 of CPC, the Civil Courts are competent to grant appropriate relief, after enquiry, if necessary. This view is explicit from the decision of the Supreme Court (2) cited supra.

11. The first respondent is the wife and second respondent is the son of the petitioner. They filed O.P. No. 184 of 1993 against the petitioner seeking to recover past and future maintenance under the provisions of the Hindu Adoptions and Maintenance Act, 1956. The respondents have filed an application u/s 151 of CPC before the Court below seeking interim maintenance on the ground that they are unable to maintain themselves. The first respondent has categorically stated that as a result of petitioner neglecting the respondents right from the year 1991 and as there is no source of income for their survival, interim maintenance is sought for herself and for her son pending disposal of the main

O.P. The Lower Court, on contest by the petitioner, allowed the application and directed the petitioner to pay an amount of Rs. 500/- to the first respondent and Rs. 300/- to the second respondent respectively and an amount of Rs. 1,000/- towards legal expenses pending disposal of the main O.P.

12. In the context of the discussion made by me that legal rigidity has to give way to legal necessity, the Lower Court, in my view, has rightly considered the necessity to render assistance to the respondents and has granted interim maintenance to them pending disposal of the main O.P. I do not think, the order passed by the Lower Court suffers from any infirmity, for this Court to interfere u/s 115 of CPC. The requirement contemplated u/s 115 of CPC is such that the High Court shall not vary or reverse any order made except where the order if allowed to stand, would occasion failure of justice or cause irreparable injury to the party against whom it was made. The purport of Section 115 of CPC is very much clear to say that the interference of the High Court in an order passed by the Lower Court is justified only when the order of the Lower Court if allowed to sustain, it would occasion failure of justice or cause irreparable injury. On the contrary, if this Court interferes in the order passed by the Lower Court which is in favour of the respondents, the respondents would suffer irreparable injury. In this view of the matter, I do not see any merits to interfere in the order passed by the Lower Court. Accordingly, this Civil Revision Petition is dismissed. But, however, no costs.