



Reserved on : 12.01.2024
Pronounced on : 06.02.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.2215 OF 2022 (GM - FC)

BETWEEN:

(BY MS.BIRI MARY, ADVOCATE)

... PETITIONER

AND:

... RESPONDENT

(BY SMT.RAJANI H.J., PARTY-IN-PERSON C/RESPONDENT)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR RECORDS IN EXECUTION PETITION NO.111/2020 PENDING ON THE FILE OF PRINCIPAL JUDGE, FAMILY COURT, BANGALORE AND QUASHING ANNEXURE-A ORDER DATED 08.10.2021 PASSED ON I.A.NO.2 FILED UNDER SECTION 151 OF CIVIL PROCEDURE CODE IN EX.NO.111/2020 PENDING ON THE FILE OF PRINCIPAL JUDGE, FAMILY COURT, BANGALORE; CONSEQUENTLY DISMISS THE I.A.NO.2 FILED UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE BY THE RESPONDENT IN EX.NO.111/2020 PENDING ON THE FILE OF PRINCIPAL JUDGE, FAMILY COURT, BANGALORE.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.01.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question an order dated 08-10-2021 passed on an application, I.A.No.2 in Execution Petition No.111 of 2020 pending before the Principal Judge, Family Court, Bengaluru directing maintenance to be paid to the respondent/wife at ₹25,000/- per month and the minor child from the date of judgment and decree dated 28-09-2020 passed in M.C.No.1100 of 2015 & M.C.No.4772 of 2016.

2. Heard Ms. Biri Mary, learned counsel appearing for the petitioner and Smt. Rajani H.J., respondent/party-in-person.

3. The facts, in brief, germane are as follows:-

The petitioner is the husband and the respondent is his wife. The two get married on 13-11-2011 and from the wedlock a child is born, now said to be aged 9 years. The relationship between the petitioner and the respondent/wife appears to have floundered and the respondent/wife is said to have left the matrimonial house. The discord between the two led them to file two petitions – one in M.C.No.1100 of 2015 filed by the husband seeking a decree of divorce and the other in M.C.No.4772 of 2016 filed by the wife seeking restitution of conjugal rights. The concerned Court takes both the matrimonial cases together and by its common judgment dated 28-09-2020 rejects the petition for divorce filed by the husband on the score that the husband has not proved cruelty on him by the wife and allows M.C.No.4772 of 2016 filed by the wife seeking restitution of conjugal rights. Both these orders are called in question by the husband before this Court in MFA No.96 of 2021 and MFA No.98 of 2021 which is pending consideration at the hands

Division Bench of this Court. In the interregnum, alleging that the husband has not taken the wife back to the matrimonial house pursuant to the judgment of restitution of conjugal rights, the wife files an execution petition seeking to execute the decree of restitution of conjugal rights in Execution No.111 of 2020. The concerned Court, on the interim application filed in the execution petition, allowed the application in part, granting interim maintenance to the wife and the minor child from the date of judgment and decree dated 28-09-2020 till the disposal of the execution petition. This order is passed on 08-10-2021. The petitioner prefers the subject petition on 27-01-2022 calling in question the said order of grant of interim maintenance.

4. The learned counsel appearing for the petitioner would contend that the Court hearing the execution petition cannot consider any application filed before it for grant of interim maintenance as the Court could have executed only the decree of restitution of conjugal rights. Even on merits of the matter, the learned counsel would submit that the petitioner is already paying maintenance pursuant to application in Criminal Miscellaneous

No.23 of 2014 at ₹20,000/- and the application in the execution petition was not even maintainable and, therefore, the amount directed to be paid at ₹25,000/- to the wife and the child is contrary to law. She would further contend that both the orders are challenged before this Court in M.F.A.Nos.96 of 2021 and 98 of 2021 and the same are pending consideration. Therefore, on all the aforesaid grounds she seeks quashment of the impugned order and grant of consequential relief not to claim any arrears of maintenance.

5. On the other hand, the respondent who appears in person takes this Court through the order passed by the concerned Court rejecting the decree for divorce and allowing the petition for restitution of conjugal rights. She would submit that when this Court has not granted stay in M.F.A.No.96 of 2021 the husband ought to have taken the wife back to the matrimonial house. She would therefore, submit that execution petition is filed by her to go back to the matrimonial house. She would contend that interim maintenance is appropriately ordered as it is for the executing

Court to award such maintenance on the failure of the petitioner not adhering to the decree of restitution of conjugal rights.

6. The learned counsel for the petitioner would join issue in contending that the wife has been brutal over the husband and as such he is not interested in her and will never take her back to the matrimonial house since he has had enough torture from the hands of the wife. She would, therefore, contend that the petition be allowed and the order directing maintenance be quashed.

7. I have given my anxious consideration to the submissions made by the learned counsel for the petitioner and the respondent/ party-in-person.

8. The afore-narrated facts are not in dispute. The relationship between the husband and the wife turning sore leads them to two petitions before the jurisdictional Family Court. The husband registers M.C.No.1100 of 2015 invoking Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short) seeking dissolution of marriage that took place on 13-11-

2011 by granting a decree of divorce. After the husband registers the aforesaid matrimonial case seeking decree of divorce, the wife files another petition in M.C.No.4772 of 2016 invoking Section 9 of the Act for a decree of restitution of conjugal rights. These petitions filed by the husband and the wife were taken up together by the concerned Court and a judgment and decree is passed on 28-09-2020, decreeing M.C.No.4772 of 2016 filed by the wife seeking restitution of conjugal rights and dismissing M.C.No.1100 of 2015 filed by the husband seeking decree of divorce. Certain observations in the course of the judgment are germane to be noticed and they read as follows:

"33. The respondent has filed petition under Section 9 of Hindu Marriage Act, 1955, for restitution of conjugal rights on 27-10-2016. The petitioner has filed the divorce petition under Section 13(1)(i-a) of Hindu Marriage Act on 07-03-2015. That on 28-04-2015, the respondent appeared before the Court through her counsel and the matter was referred to Bengaluru Mediation Centre for conciliation. Report from Bengaluru Mediation Centre was received by this Court on 16-01-2016 as the matter was not settled. Before commencement of evidence of petitioner, the respondent Smt. Rajani H.J., has filed petition for restitution of conjugal rights and the same has been registered in M.C.No.4772 of 2016. On 03-01-2019 after filing objections to main petition, both cases i.e., M.C.No.1100 of 2015 and M.C.No.4772 of 2017 were clubbed for recording common evidence. PW-1, B.T. Chandrashekar has not whispered anything about the averments of the petition in M.C.No.4772 of 2016. To substantiate the case of

the respondent, the respondent examined herself as RW-1 and produced documents Exs.R1 to R23. During the course of cross-examination of RW-1, the counsel for the petitioner has not disputed the photos which are marked as Exs.R1 to R8 and R20 and he has not elicited any favourable answers from RW-1 to discard the evidence of RW-1. On the contrary, the learned counsel for the petitioner suggested to RW-1 that the petitioner called over phone to her to speak to the child and the same is admitted by RW-1. RW-1 voluntarily states that the petitioner also speaks to her over mobile phone. To substantiate this, the respondent has produced EX.R21, which pertains to Jio Sim Mobile No.7892670341 of the respondent Smt. Rajani H.J. The petitioner has not disputed this document. RW-1 clearly stated before the court that phone call details received to his mobile number from petitioner's mobile phone number i.e., from 1-01-2020 to 31-10-2020 is marked as Ex.R21. Ex.R21 is not disputed by other side. Therefore, the conduct of the petitioner and the respondent clearly shows that after filing these petitions by both parties, they are in cordial terms and both are having love and affection towards their son. While answering point No.1, this Court has held that the petitioner has failed to prove the ground of cruelty as alleged by him, accordingly he is not entitled for decree of divorce. Since this Court has already held that the petitioner is not entitled for divorce on the ground of cruelty for the aforesaid reasons, it is just and proper to decree the petition for restitution of conjugal rights as the same is proved by the respondent. Considering the facts and circumstances of the case for the aforesaid reasons and also keeping in mind the aforesaid decisions relied by the respondent's counsel, I am of the considered opinion that it is just and proper to dismiss the case of the petitioner and decree the petition for restitution of conjugal rights. Hence, I answer point No.1 in the negative, point No.2 in affirmative, point No.3 in the negative.

34. Point No.4: *In view of the discussion in answer to point Nos.1 to 3, it is held that the petitioner/ husband has failed to prove that the respondent has subjected him to cruelty, therefore, he is not entitled for decree of divorce on the ground of cruelty under Section 13 (1)(ia) of Hindu Marriage Act, 1955. On the other hand, the respondent/ wife has proved that the petitioner has withdrawn from her society without any reasonable cause or excuse. Hence, she is entitled*

for decree of restitution of conjugal rights under Section 9 of Hindu Marriage Act, 1955. Accordingly, I answer point No.4 in favour of the respondent by granting decree for restitution of conjugal rights."

Based upon the aforesaid observations, the operative portion of the order passed by the concerned Court reads as follows:

"ORDER

The petition in M.C.No.1100/2015 filed by the petitioner/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 is dismissed.

The petition in M.C.No.4772 of 2016 filed by the respondent/wife under Section 9 of the Hindu Marriage Act, 1955 is allowed. There shall be decree of restitution of conjugal rights as sought for.

The respondent/wife is directed to live with the petitioner/husband in the matrimonial home and resume conjugal relationship with the petitioner forthwith.

The original judgment delivered shall be kept in M.C.No.1100 of 2015 and copy of the same shall be kept in M.C.No.4772 of 2016.

In view of the facts and circumstances of the case and relationship between the parties, there is no order as to costs."

(Emphasis added)

The concerned Court, after considering entire evidence, comes to conclude that the husband has failed to prove that he was subjected to cruelty and rejects the petition for divorce and on the same evidence holds that the wife was entitled to a decree of

restitution of conjugal rights. The decree is passed on 28-09-2020 in favour of the wife. This is called in question by the husband before this Court in M.F.A.No.96 of 2021. It is pending consideration before this Court and it is an admitted fact that this Court has not passed any order of stay of the decree of restitution of conjugal rights granted in favour of the wife.

9. Since the wife was not taken back to the matrimonial house, she files an execution petition in Execution case No.111 of 2020. The same is pending consideration before the executing Court. In the Execution Petition, the wife files an application, I.A.No.2 seeking interim maintenance at ₹25,000/- and arrears of maintenance to be paid. The Court again considers the issue brought before it and would pass the following order:

*"8. **Point No.1:** As per the judgment of Hon'ble Apex Court in Criminal Appeal No.730 of 2020 (arising out of SLP (Crl.) No.9503of 2018) in the case of Rajnesh v. Neha & Anr. In which it is held that both parties have to file their respective affidavits for disclosure of assets and liabilities as per proforma enclosure-I to the judgment. Accordingly both parties are directed for disclosure of their assets and liabilities.*

9. The decree holder has filed her affidavit. In her affidavit, she has stated that she has done B.E and residing in the cause title address. Date of marriage is 13-11-2011.

General monthly expense is ₹1/- lakh. Her dependents are her father – 74 years and her son – 9 years. Expenses incurred on behalf of dependents is ₹1,50,000/- p.m. (₹1/- lakhs for her father and ₹50,000/- for her son). From the existing marriage, she has a son by name Vihaan B.C., aged 9 years and monthly expense is ₹50,000/- p.m. She has taken hand loan of ₹3,50,000/- from her sister Ashwini H.J. Her monthly income is nil. Her husband has done BE and salaried person and enclosed his salary certificate. About assets and liabilities of her husband, she has enclosed RTC. From the salary certificate, it reveals that her husband joined service on 25-04-2011 and gross salary is ₹1,99,487/- and net salary is ₹1,38,666/- after deduction of ₹60,821/- towards PF and IT of ₹12,544 and ₹48,277/-. In addition to salary, he is getting LTA of ₹1/- lakh per annum and ₹15,000/- p.a. towards medical reimbursement. RTCs produced by the decree holder reveals that the name of the father is there in all RTCs and all the properties are agricultural lands, in which rice and areca nuts were grown.

10. The judgment debtor has filed his affidavit stating that he has done BE in Mechanical and residing in a rented house at No.404, Gokuldharm Apartment, A Wing, Narahari Nagar, Pathardiphata, Nashik-422 010. General monthly expense is ₹60,000/-. In Criminal Miscellaneous No.23 of 2014 before MMTC-II at Bengaluru, ₹20,000/- p.m. is ordered towards maintenance amount. In M.C.No. 1100 of 2015, ₹25,000/- p.m. is awarded towards maintenance. The said case is disposed and MFA Nos. 96 of 2021 and 98 of 2021 are pending before the Hon'ble High court of Karnataka, Bengaluru. All the maintenance orders are complied by him. His dependent is his mother – 67 years and her expense is ₹40,000/- and she is suffering from cardiac related illness and other old age diseases. He has one child by name Vihaan B.C., aged 8 years. He is working at KOSO India Pvt.Ltd. as Senior Manager and his salary is ₹1,99,338/- p.m. He has two wheeler bearing No.KA 03 HW 7109. He has enclosed RTCs in which he has share in ancestral property. All the jewels are in the custody of the decree holder. The decree holder has done BE in Civil. Despite she is working, not disclosing her employment and salary details. The decree holder has share in immovable property of her ancestral property for which RTCs

were enclosed. RTCs of father of the decree holder discloses that he has got 5 acres of land in which coconut, rice and jowar were grown.

11. The decree holder has filed this execution petition under Order XXI Rule 32 of Code of Civil Procedure, 1908 to execute the judgment and decree passed in M.C.No.1100 of 2015 and M.C.No.4772 of 2016. This Court has passed the judgment and decree in favour of the decree holder for restitution of conjugal rights on 28-09-2020. Since judgment debtor has failed to comply the judgment and decree passed by this Court, the decree holder has filed this execution petition under Order XXI Rule 32 of Code of Civil Procedure, 1908. The judgment debtor has appeared before the Court. At the request of both parties, the case was referred to Lok Adalath, but the matter was not settled. During the pendency of M.C.No.1100 of 2015, this Court has passed the order on I.A.No.5 filed under Section 24 and 26 of Hindu Marriage Act, 1955 in which the judgment debtor is directed to pay ₹25,000/- p.m. towards interim maintenance to the decree holder and the minor child from the date of application i.e., from 22-03-2017 till disposal of the case. It is made clear in the said order that ₹25,000/- maintenance awarded is in addition to maintenance of ₹20,000/- awarded in Domestic Violence case. Judgment debtor is not ready to comply the judgment and decree passed by this court. Judgment debtor has preferred M.F.A. No.96 of 2021 and M.F.A. No.98 of 2021 before the Hon'ble High court of Karnataka and he has not obtained any stay order from the Hon'ble High Court of Karnataka. Since this Court has passed the judgment and decree in favour of the decree holder, this Court has not passed any order as to permanent alimony or maintenance amount in favour of decree holder in M.C.Nos. 1100 of 2016 and 4772 of 2016. After disposal of M.C.Nos. 1100 of 2015 and 4772 of 2016, the judgment debtor has not paid any maintenance amount to the decree holder. Since the judgment debtor has not complied the judgment and decree passed by this Court, the decree holder has filed this execution petition and also sought for interim maintenance. Considering the educational qualification of both parties, financial status, basic requirement for decree holder and her child such as food, shelter, clothing, educational expenses and medical expense,

and also keeping in mind interim maintenance awarded by this Court during the pendency of M.C.Nos. 1100 of 2015 and 4772 of 2016, I am of the considered opinion that it is just and proper to award an amount of ₹25,000/- p.m. from the date of judgment and decree in M.C. No.1100 of 2015 and M.C.No.4772 of 2016 i.e., from 28-09-2020 till disposal of this case. Accordingly, I answer point No.1 in the affirmative.

*12. **Point No.2:** For the aforesaid reasons and discussion made above, I proceed to pass the following:*

ORDER

I.A.No.2 filed by the decree holder under Section 151 of Code of Civil Procedure, 1908 is hereby allowed in part.

The judgment debtor is directed to pay a sum of ₹25,000/- (Rupees Twenty Five Thousand only) per month towards interim maintenance to the decree holder and her minor child from the date of judgment and decree in M.C. No.1100 of 2015 and M.C.No.4772 of 2016 i.e., from 28.09.2020 till disposal of this execution petition.

It is made clear that ₹25,000/- maintenance awarded in this case is in addition to maintenance of ₹20,000/- awarded in Domestic Violence Case."

The Court considers that the child is 9 years old and expenses of the child for his education would be at high and maintenance that is awarded in the case filed by the husband invoking the Domestic Violence Act would not be enough for the wife to take care of the child and herself and also records that this Court has not granted any stay of the decree of restitution of conjugal rights. It also records that the husband has not paid any maintenance for a long

time. All these factors lead the Court to direct the husband to pay ₹25,000/- per month as interim maintenance to the wife and the minor child from the date of judgment and decree i.e., 28-09-2020 by adding a rider that ₹25,000/- now directed to be paid is in addition to the maintenance of ₹20,000/- awarded in Domestic Violence case. Whether it is tenable or not is what is required to be considered.

10. The submission of the learned counsel for the petitioner that the executing Court could not entertain an application seeking grant of interim maintenance is unacceptable and is noted only to be rejected. If this Court had granted an interim order of stay of the decree of restitution of conjugal rights then it was open to the learned counsel for the petitioner to urge that contention. Since that has not happened and the husband has not taken the wife to the matrimonial house, it was open to the wife to seek interim maintenance for herself and the kid even at the stage of execution of the decree. No fault can be found with the order passed by the concerned Court in directing payment of interim maintenance.

11. Insofar as the contention of duplication of maintenance is concerned, it is an admitted fact that the wife is getting maintenance at ₹20,000/- per month in the case registered by her invoking the provisions of the Domestic Violence Act. The wife had preferred an application in M.C.No.1100 of 2015 seeking grant of interim maintenance invoking Sections 24 and 26 of the Act. It was filed in a case registered by the husband seeking dissolution of marriage. The Court granted ₹25,000/- to be paid to the wife. The husband had called this in question before this Court in Writ Petition No.15952 of 2019. This comes to be dismissed by the learned single Judge in terms of his order dated 24-07-2019. The order reads as follows:

"7. I have considered the submissions made by both sides and have perused the records. Admittedly, the take home salary of the petitioner is ₹1,38,666/- per month. There is no material on record to show that respondent is employed or has any source of income. The respondent is getting a sum of ₹45,000/- per month from both the proceedings namely, under the Hindu Marriage Act as well as under the provisions of the Protection of Women from Domestic Violence Act, 2005. The respondent is required to pay a sum of ₹17,000/- per month as rent to the apartment in which she is staying with the child and also required to bear the expenses of a child, who is aged about six years and who goes to school. For the aforementioned reasons and taking into account the salary of the petitioner, the amount awarded by the Family Court, Bengaluru cannot be said to be excessive. Thus, the impugned order neither suffers from any jurisdictional infirmity nor any

error apparent on the face of the record warranting interference by this court in exercise of power under Article 227 of the Constitution of India.

8. *Even otherwise, it is well settled in law that the jurisdiction of this court under Article 227 of the Constitution cannot be exercised to correct all errors of a judgment of a Court acting within its limitation. It can be exercised where the orders is passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law and justice. [See: **JAI SINGH AND OTHERS v. M.C.D. AND OTHERS; (2010) 9 SCC 385; SHALINI SHYAM SHETTY v. RAJENDRA SHANKAR PATIL; (2010) 8 SCC 329 and RADHE SHYAM AND ANOTHER v. CHABBI NATH AND OTHERS; (2015) 5 SCC 423**]. In the instant case the impugned order is not passed in violation of fundamental principles of law and justice warranting interference of this Court under Article 227 of the Constitution.*

9. *In view of the preceding analysis, I do not find any merit in the petition and accordingly the same fails.*

10. *However, the attention of this court is invited to the Rules framed by this Court namely, Karnataka (Case Flow Management in Subordinate Courts) Rules, 2005, wherein, it is provided that the matrimonial dispute should be decided within a period of one year. Since the proceedings under Section 13 of Hindu Marriage Act is pending before the Family Court, Bengaluru since 2015, the Family Court, Bengaluru shall make an endeavour to conclude the same expeditiously preferably within a period of eight months from today.*

Accordingly, the writ petition is disposed of".

Therefore, the said grant of interim maintenance in the matrimonial case, seeking dissolution of marriage, has become final inter-parties. Maintenance was paid by the husband till the decree of restitution of conjugal rights was passed by the concerned Court.

In another proceeding where the wife had instituted proceedings invoking Domestic Violence Act, maintenance was paid to the wife up to the date of decree of restitution of conjugal rights. A memo of calculation is filed by the petitioner himself depicting that payment of ₹20,000/- in the Domestic Violence case was stopped on and from 02-09-2020 as the decree was passed on 28-09-2020. The husband then stops payment of maintenance in the matrimonial case as well, on the ground that decree of restitution of conjugal rights has been passed. The memo of calculation itself shows payment till 02.09.2020. Therefore, the amount that the wife was being paid under the Domestic Violence Act on an order in I.A.No.5 under Section 24 of the Act ceases on 02-09-2020. This is borne out from the records.

12. Therefore, on and from 02-09-2020 the husband neither takes the wife back to the fold of the matrimonial house nor pays maintenance to the child and the wife. Therefore, he has left the two in the lurch. The categorical submission of the Learned counsel for the husband is that, the petitioner cannot take the wife and the child back to the matrimonial house. Therefore, if the husband does

not want the wife and the child back, he cannot escape maintenance merely because he has challenged the order of restitution of conjugal rights before this Court.

13. The memo of calculation filed further depicts that the husband has begun to pay the maintenance in the execution case based on I.A.No.2 which is impugned in the subject petition. Therefore, the bogey of duplication of amounts is contrary to record and a statement that is incorrect is made by the learned counsel for the petitioner as records speak otherwise. If the petitioner had continued to pay in the Domestic Violence case or in the matrimonial case after the decree, it would have been a circumstance altogether different. Therefore, no fault can be found with the order of the concerned Court, though duplication of maintenance under any provision of law is impermissible. In the case at hand, I find no duplication of the amount, as maintenance is stopped from 02-09-2020 and only maintenance that is granted is the impugned maintenance.

14. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected.

Consequently, I.A.No.1 of 2023 also stands disposed.

**Sd/-
JUDGE**

bkp