



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2024

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 11721 OF 2020 (GM-FC)

BETWEEN:

...PETITIONER

(BY SRI. CHETHAN A.C., ADVOCATE)

AND:

...RESPONDENT

(BY SRI. NARENDRA S., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED: 17.2.2020 ON IA FILED UNDER SECTION 151 OF CPC PASSED BY THE III RD ADDITIONAL FAMILY COURT, BENGALURU IN M.C.NO.1694/2016 ANNEXURE-A.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 04.03.2024, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI





CAV ORDER

The present writ petition is filed aggrieved by the order passed on I.A. filed under Section 151 of CPC in MC.No.1694/2016 dated 17.02.2020 by the III Addl. Family Court, Bengaluru, the wife is before this court.

2. The petitioner and respondent are referred to as wife and husband for the sake of convenience.

3. The husband/respondent in the writ petition had filed MC seeking divorce on the ground of cruelty and desertion. In that, the wife had filed IA.No.3 under Section 24 of the Hindu Marriage Act r/w Section 151 of CPC to direct the husband to pay a sum of Rs.25,000/- per month towards maintenance pendenti-lite and pay a sum of Rs.50,000/- towards litigation expenses. The family court by order dated 14.03.2019 had granted an amount of Rs.15,000/- per month towards interim maintenance to her and her minor daughter from the date of application i.e., 15.07.2016 till the disposal of the main petition and also a sum of Rs.30,000/- towards one time litigation expenses. The husband is directed to pay the arrears of interim maintenance amount within one month in lumpsum and he



shall pay the regular interim maintenance amount on or before on 5th day of every succeeding month.

4. The present application is filed by the wife under Section 151 of the CPC stating that there shall be stay of all further proceedings for non payment of the arrears of interim maintenance. The husband has filed his objections to the I.A. The trial court by order impugned had dismissed the petition, stating that the petition for maintenance is filed in the year 2016 and interim maintenance is granted by order dated 15.07.2016 and till this time no execution petition is filed for recovery of arrears of interim maintenance. When the case is posted for arguments, the present application came to be filed and the court felt that there are no bonafidies in the application to stay the further proceedings. The court observed that the wife is always at liberty to file execution petition and recover the arrears of maintenance if any. Considering the age of the petitioner and as already 4 years have elapsed, the court had declined to stay the further proceedings. Aggrieved thereby the wife is before this court.



5. When this matter came up before this court on 11.01.2001, this court had stayed further proceedings on the file of the III Addl. Principal Judge, Family Court.

6. Learned counsel appearing for the wife submits that the court failed to exercise its inherent jurisdiction to stay the proceedings in order to compel the husband/respondent to pay the arrears of maintenance. He relied on the Judgment in case of **M. Ramachandra Rao –Vs- M.S.Kowsalya**¹ wherein it is held that the it is the highest duty of the trial judge to insist upon obedience of orders of interim maintenance and trial judge has inherent powers to stop further proceedings commenced by the husband. Learned counsel further submits that the trial court failed to follow the judgment of this court in the case of **H.K. Vijaykumar –Vs- Smt. Rajini in W.P.No.36859/2018** dated 31.10.2018. The court had failed to look at the plight of the wife and the daughter who have not been paid any maintenance.

7. Learned counsel appearing for the respondent/husband submits that when an order is passed granting maintenance, when the same is not paid, available option to the wife is to file

¹AIR 1969 Mysore 76



Execution proceedings but she cannot come up before this court seeking to stay the further proceedings and such power is not vested with the court. The trial court had rightly dismissed the petition and no grounds are made out to interfere with the well considered order passed by the trial court.

8. Having heard the learned counsel on either side, perused the entire material on record. In this case the petition for divorce is instituted by the husband seeking divorce on the ground of cruelty and desertion. Admittedly an order is passed for payment of maintenance on 15.07.2016. and he has not complied with the order of the court. Learned counsel had relied on the judgment of this court in the case of **H.K. Vijaykumar -Vs- Smt. Rajini referred supra**. In the referred case, the Family Court had passed an order that if the arrears of maintenance is not paid by the next date of hearing the proceedings will be stayed. Aggrieved thereby the husband approached the High Court. The co-ordinate bench of this court had observed that there is no escape route for the husband unless there is an order from the court, it is the bounden duty of a husband to see that the wife does not become a destitute or a beggar. The maintenance granted by the trial court is



hardly a meager amount. The court felt that such an order passed by the court is in accordance with law. In the case of ***M. Ramachandra Rao -Vs- M.S.Kowsalya referred supra*** there also the court observed that when the judge had passed an order that the husband shall pay the arrears of maintenance, it is the highest duty of the court to insist upon obedience to that direction. If there was disobedience, the court has inherent power to stop further proceedings which were commenced by the husband. In these two judgments, when an order is passed by the court staying all further proceedings under Section 151 of CPC by invoking the inherent powers, this court has upheld the same.

9. In the present case, the husband has filed the case for divorce. He wants to pursue the proceedings and he want an order of divorce by opposing the petition filed by the wife staying further proceedings till the maintenance is paid. But at the same time he does not want to comply with an order passed by the court. This kind of an approach by any litigant cannot be appreciated and encouraged by the court. A party who has no respect to the orders of the court and on the face of it willfully violates the order cannot afford to submit before



the court, that the court has to proceed with the matter. He cannot blow hot and cold at the same time. Though a mechanism is provided for execution of the orders, at the same time, the party who is appearing before the court should have respect towards the orders of the court. Whenever the court finds that there is abuse of process of law the court can exercise its inherent power and pass appropriate orders by exercising the jurisdiction under Section 151 of CPC. The whole purpose of granting interim maintenance to a women is to enable her to pursue judicial proceedings and also to take care of the basic necessities required for a women who is throne out of the house. When blatantly and deliberately a person floats the orders of the court, still wants to seek further orders of the court that is where the court has to step in and the court shall exercise the powers under Section 151 of CPC. Now in a case of where the proceedings are initiated by the husband, the court has got ample power to grant stay of further proceedings in the MC till the maintenance is paid. Now if it is the petition filed by the wife and in that case, stay of further proceedings would not arise, in those cases the court can always strike off



the defence of the respondent. Order 6 Rule 16 of CPC deals with striking of the pleadings and which reads as:

Order 6, Rule 16 CPC

16. Striking out pleadings.

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(C) which is otherwise an abuse of the process of the Court.

The power to strike off the pleadings has to be exercised with great care and circumspection, especially in cases where the parties are deliberately floating the orders of the court, then the court has to exercise its powers under Section 151 of CPC and also under Order 6 Rule 16 of CPC by staying the proceedings/striking of the defence pleadings. The Hon'ble Apex Court in the case of ***Manohar Lal Chopra -Vs- Rai Bahadur Rao Raja Seth Hiralal***² has observed that the inherent powers of the court in no way is controlled by the provisions of the code in the process of doing complete justice to the parties.

² AIR 1962 SC 527



10. This court is coming across several cases where the husband will not pay the maintenance as ordered by the court and which attains finality but he insists for proceeding with the main case. The CPC provides for execution of the orders passed by the court. No doubt there is mechanism provided for execution of the orders. In these pending matrimonial matters, when the order is passed for maintenance pendente lite, the party who is contesting the matter cannot tell the opposite party that I will proceed with the case and you can go before the executing court for recovery of money. In matrimonial cases thousands of execution petitions are pending. In some cases the parties are not in a position to meet their basic necessities and the opposite parties in spite of not obeying the orders of the court are enjoying the further orders passed by the court. In these matrimonial proceedings, the court while exercising the jurisdiction under Section 151 of CPC and under Order 6 Rule 16 of CPC should either stay the proceedings or strike off the pleadings. This to some extent will subserve the ends of justice. It will also send a message to the concerned that they cannot get away with non-compliance of the orders of the court and deprive other party from the fruits of the order.



11. In the light of the above discussion, this court is of the view that the trial court failed to exercise the discretion vested with it under Section 151 of CPC for doing substantial justice to the parties.

Accordingly, the following:

ORDER

- i. The order passed on I.A. in MC.No.1694/2016 dated 17.02.2020 by the III Addl. Family Court, Bengaluru is set aside and there shall be stay of all further proceedings in MC.No.1694/2016 till the arrears of maintenance are paid.
- ii. If the arrears are cleared, the court shall dispose of the MC in 6 months as it is 8 years old.
- iii. Accordingly, the writ petition is ***Allowed.***
- iv. All I.As., in the writ petition shall stand closed.

**SD/-
(LALITHA KANNEGANTI)
JUDGE**

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List No.: 1 Sl No.: 47