

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND J.M.F.C., AT
TARIKERE**

Present: Sri.Ramamurthy N. B.A. LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

CrI.Misc.449/2016

Dated:04th Day of February 2020.

ORDERS ON IA.NO-02

The applicant has filed present I.A.No.02 U/S.24 of Hindu Marriage Act. In the annexed affidavit the applicant stated that, the respondent No.1 is working in a police department, earning Rs.40,000/- p.m. and he had a capacity to provide maintenance to her and house facilities. she is residing at her parents house at Gadihalli village Tarikere Taluk. there is a expenses of Rs.500/- for every hearing date. Hence, prays for pass the interim order of maintenance of Rs.20,000/- p.m. for her essential needs and medical expenses.

5. On other hand, the 1st respondent has filed objection to the present I.A. stating that, the very provision reflected in I.A.No.2 under Section 24 of Hindu Marriage Act does not arise at all as the very provision does not comes under the provisions of Domestic Violence Act, as the petitioner is not entitle to claim any relief. hence, the application is not maintainable and the same is liable to be dismissed. The petitioner has not shown any sufficient reason with proper provision in the said application and hence, the very application is not maintainable and the same is liable to be dismissed. The petitioner is seeking the relief in the alleged application stating that, she need the medical and other expenses of Rs.20,000/- to lead the life in the village and the same is required to be proved by the petitioner herself about the same.

The application filed by the petitioner if allowed, then the respondent will be put to great hardship and injury and on the other hand, if the application filed by the petitioner is rejected, no hardship or injury would be caused to her. Wherefore, the 1st respondent prays for dismiss the I.A. filed by the petitioner under section 24 of Hindu Marriage Act, in the interest of justice and equity.

5. Heard counsels for applicant and respondents and perused the materials in file.

6. The following points arises for consideration:-

-:POINTS:-

1. Whether the of the petitioner has made out sufficient ground to allow the I.A. ?

4. What order?

7. Findings to the above points are as under:-

Point No.1 : In the
Point No.2 : As per final order
for the following

-:REASONS:-

8. Point No.1 :-The petitioner has filed petition under Domestic Violence Act against respondents. The present application is filed by the petitioner for interim maintenance. According to petitioner, the 1st respondent is responsible for provide maintenance to her as a husband. She having no any source of income and there is a expenses of Rs.500/- for every hearing. Hence, prayed for pass the order of interim maintenance against respondents. According to respondents, the present application filed by the petitioner is not maintainable as the petitioner has filed present petition U/S.24 of Hindu Marriage Act. There is a specific provision in the P.W.D.V.Act sought for interim maintenance. Hence, the petitioner has filed present application under wrong provision. Under P.W.D.V.Act while passing the order of interim maintenance, the enquiry should be conducted and evidence of respondent is required. Therefore, without making any enquiry, passing the order of maintenance is not proper.

The counsel for respondent has coated decision of Hon'ble High Court of Karnataka which reads as follows:-

Krishnamurthy Nookula Vs. Y. Savitha-Karnataka H.C.Judgment

If the order under PWDVA (Protection of Women from Domestic Violence Act, 2005) is not an ex-parte order, then even to grant interim relief to the petitioner (wife), the court must conduct an inquiry as would be required in a Cr.P.C. summary trial, that is, summons case. This means that husband will be allowed to give his basic evidence etc and any order will be passed only after that.

The counsel for petitioner has submits that, coating of wrong provision is not a ground for reject the prayer or petition. Therefore, mere coating of wrong provision is not a ground to refused the interim maintenance as this court has a power to pass the order of interim maintenance.

By considering the above aspects submitted by the both counsels, it is well settled proposition of law that, coating of wrong provision is not a ground for reject the prayer of petitioner as argued by the counsel for petitioner. U/S.23*-** P.W.D.V.Act, the Magistrate has power to pass the interim maintenance order. But by considering the above decision coated by the respondent, the Hon'ble High Court has taken view that, after issuance of notice to the respondents while considering the interim application for interim maintenance order, court should conduct the enquiry by taking basic evidence of husband.

In the present case, the petitioner already lead her evidence as a P.W.1, the respondents have also cross examined the P.W.1, but respondent evidnece not yet commenced. Therefore at this stage, by considering the observations made by the Hon'ble High Court has stated above, opinion of this court is that, it is just and proper to conduct the enquiry on interim application by taking respondent evidence. Therefore, in view of this court is that, at this stage, the petitioner has not made out sufficient ground to allow the present I.A. This court will consider the present I.A. after recording the basic evidence of respondent No.1 as per observation made in the above coated decision. Accordingly this court answered point No.1 in the negative.

Point No.2 :-As per above reasons and answer given to the point No.1, this court proceed to pass the following:-

ORDER

The I.A.No.2 filed by the petitioner will be decide after enquiry of the respondent No.1.

The respondent No.1 is hereby directed to give his basic evidence on I.A. No.2 on next date of hearing.

Crl.Misc.449/2016

Both parties are hereby directed to co-operate the case proceedings to dispose the case as early as possible.

Sd/-
(RAMAMURTHY N.)
ADDL.CIVIL JUDGE & J.M.F.C.,
TARIKERE.