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Court : Karnataka

Decided On : Aug-24-2015

Judge : A.S. Bopanna

Appeal No. : Writ Petition No. 16180 of 2012 (GM-FC)

Appellant : N. Raja

Respondent : Master Dheeraj

Judgement :

1. The petitioner is before this Court assailing the order dated 26-4-2012 impugned at Annexure-F to the petition. The respondent herein is the minor son of the petitioner. The petitioner and his wife had certain differences with regard to their marital relationship and in that view were before the Court below in M.C.No. 102 of 2010. On reference to mediation they have agreed to have the marriage performed on 11-2-2001, dissolved by mutual consent as per the memorandum at Annexure-B to the petition. The custody of the respondent is with his mother and the petitioner herein has been granted visitation rights. When this was the position, the respondent minor son represented through his mother, natural guardian, has filed a petition under Section 125 of the Criminal Procedure Code, 1973, in Criminal Miscellaneous No. 107 of 2011 seeking maintenance in the said proceedings. The application for interim maintenance was also filed. The Court below by the order dated 26-4-2012 has directed the petitioner herein to pay the monthly maintenance of Rs.2,000/- and also educational expenses of Rs.35,000/-

for the ensuing academic year. The petitioner aggrieved by the same is before this Court.

2. Learned Counsel for the petitioner while assailing the order impugned would contend in the proceedings in which there was dissolution by the mutual consent, the parties have agreed that maintenance will not be sought for and therefore the Court below is to keep this aspect in view. It is the further contention that as per the documents produced, his salary was only Rs.7,600/- per month with which he has to not maintain himself but also his mother and a brother who is disabled. In that view, it is contended that the maintenance as orders is not justified and even otherwise the amount of Rs.35,000/- educational expenses as ordered is not justified. He contends that the mother of the petitioner could look after the child with her income and as such the order impugned is liable to be set aside.

3. Having heard the learned Counsel for the parties, I have perused the petition papers including the order impugned herein. The proceedings in which there was a dissolution of the marriage by mutual consent was a proceedings between the petitioner and his wife. It is no doubt true in the said proceedings both of them had agreed not to claim maintenance. Even if this aspect is to be kept in view, while taking note of the proceedings under Section 125 of the Code of Criminal Procedure it has been filed in the name of the son and such understanding between the parents would not bind the son and he would be entitled to establish his case for maintenance and secure the same. At present, there is no dispute to the fact that the son is minor and as on the date of filing the petition before the Court below he was aged about seven years and therefore, would be eleven years at this point of time.

4. If that be the position, certainly he would require maintenance from his parent and even if the mother has certain income the obligation of the petitioner as a father would still remain. The question however is with regard to the quantum of amount that has been awarded by the Court below. Though the petitioner contends that his salary is only a sum of Rs.7,600/-, the contention as put forth by the respondent herein before the Courts below was that he was getting income of Rs.18,000/-. Even if the said amount cannot be accepted the fact remains that the

minimum maintenance in any event would have to be provided by the father and it cannot be disputed. If that be the position the sum of Rs.2,000/- as has been ordered by the Courts below cannot be stated to be excessive at this point of time.

5. Insofar the educational expenses is concerned, what was ordered was only for the ensuing academic year. If the petitioner finds the same to be a burden it would still be open to put forth such contention before the Court below in that regard and on that aspect as and when the issue relating to educational expenses arises in future. Therefore, by the impugned order since the educational expenses for only one year has been ordered, the same does not call for interference, since I have already taken note that the maintenance as awarded is not excessive and this Court at the first instance had granted the interim order only to the extent of 50%. If any event the petitioner is required to pay 50% of the balance arrears and monthly maintenance which according to the petitioner has been done. If that be the position, what remains to be kept in mind is that the petitioner has to pay balance of the arrears and continue to pay only the sum of Rs.2,000/- per month.

6. Therefore, I see no reason to interfere with the order impugned herein. All other contentions are left open to be urged before the Court below on the main petition. The petition is accordingly disposed of.

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