

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1648 of 2015

Ms.Keerthi Reddy .. Appellant/Petitioner

Vs.

Mr.Shiva Subramanian .. Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act read with Section 151 of the Code of Civil Procedure, against the fair and decretal order dated 22.05.2015 in I.A.No.2347 of 2014 in O.P.No.1565 of 2013 on the file of the III Additional Principal Family Court, Chennai.

For appellant : Mr.M.K.Kabeer, Senior Counsel for
Mr.T.Jayaraman

For respondent : Mr.S.S.Vasudevan

JUDGMENT

G.CHOCKALINGAM,J

This appeal is filed by the wife challenging the order dated 22.05.2015 in I.A.No.2347 of 2014 in O.P.No.1565 of 2013 on the file of the III Additional Principal Family Court, Chennai, in and by which, the said I.A. filed by the appellant/wife to direct the respondent/husband to pay Rs.35,000/- as monthly interim maintenance for the child and herself and a sum of Rs.25,000/- towards legal and travel expenses, pending disposal of the main O.P., was dismissed.

2. The appellant/wife filed main Original Petition under Section 13(1)(i-a) of the Hindu Marriage Act, stating that she married the respondent on 24.02.2000 according to Hindu rites and customs, that out of their wedlock, a female child was born to them on 11.08.2002, namely Pragnya, who is studying IV Standard in Bangalore, that the respondent-husband left the Bank (Standard Chartered Bank) due to lack of integrity without even informing the appellant-wife about his whereabouts, that through a friend, she managed to secure job with Dishnet for him, that thereafter, he left the services of the said Dishnet and joined Standard Chartered Bank, that he was dismissed by the

Management, that unable to withstand the disgraceful situation, he took to alcoholism and was abusing the appellant-wife, that the respondent-husband neglected the appellant-wife and daughter, that he indulged in extra-marital affairs, that he was admitted in Global Hospital for surgery, that the appellant and her family supported the respondent-husband for the said hospitalisation, that except sending some amount for rent and educational expenses of the child, he played no role of a father, that she is stressed and over-burdened due to entire responsibility, that though the respondent-husband is earning Rs.65,000/- per month, he sends only Rs.26,000/-, that too at the end of the month or sometimes in the beginning of the next month, which is not adequate to maintain the child and household expenses, that the appellant is earning Rs.20,000/- p.m., which is not sufficient to maintain the child, and hence, she filed the said I.A. for the relief stated above.

3. The respondent-husband filed counter affidavit before the Court below stating that he never abused or humiliated the appellant-wife and child, that the appellant-wife took the child to a Psychologist to mentally prepare her for divorce and to poison her against her own father, that he underwent a major surgery, due to which, he incurred heavy expenditure towards medicines every month, that he paid nearly Rs.9 lakhs to the appellant from May 2010 to April 2013 and also paid Rs.2 lakhs in cash to her, that he has to travel to Bangalore once in fortnight to spend time with family, that the appellant is drawing Rs.35,000/- as salary and also getting income of Rs.15,000/- from Surya Hospital, that he is drawing Rs.65,000/- as salary and repaying Rs.38,000/- to the creditors and that owing to the current financial situation, the respondent-husband is willing to pay Rs.5,000/- per month to the child.

4. The Court below, upon considering the above pleadings of the parties and upon hearing both sides, dismissed the said I.A., and observed that the appellant-wife is earning Rs.20,000/- per month and the respondent-husband is sending Rs.26,000/- for family maintenance and child and hence, there is no necessity for interim maintenance. The Court below further observed that under Section 12 of the Legal Services Authorities Act, women are entitled to free legal aid and hence, she is not entitled to get legal expenses from the respondent-husband.

5. Learned Senior Counsel appearing for the appellant-wife contended that though the respondent-husband is earning Rs.65,000/- per month, he is paying only Rs.26,000/- to the appellant-wife for herself, to run the household expenses and to maintain the child, and the amount is paid only in the end of the month or sometimes, in the beginning of the next month, that Rs.25,000/- is required towards legal and travel expenses and Rs.35,000/- per month is required as interim maintenance for

herself and child. The Court below erroneously dismissed the I.A. on the ground that the respondent-husband is already paying Rs.26,000/- per month and no further interim maintenance is required to be paid to her, and that since Legal Aid is available under the provisions of the Legal Services Act, the Court below disallowed the appellant-wife's claim for legal and travel expenses.

6. Learned counsel for the respondent-husband contended that the appellant-wife is paid Rs.26,000/- p.m. by the respondent-husband towards maintenance of family and child, and hence, there is no necessity to grant interim maintenance and therefore, there is no error or infirmity in the impugned order of the Court below.

7. It is admitted by both sides that the marriage between the appellant and the respondent was solemnised on 24.02.2000 as per Hindu rites and customs and out of their wedlock, a female child was born to them on 11.08.2002, namely Pragnya, who is studying IV Standard in Bangalore and that the respondent-husband is earning Rs.65,000/- per month and the appellant-wife is earning Rs.20,000/- per month. It is categorically admitted by the respondent-husband that he has been paying Rs.26,000/- per month to the appellant-wife for herself and child.

8. It is the allegation of the appellant that the respondent is paying the said amount of Rs.26,000/- only belatedly, i.e. in the end of the month or in the beginning of the next month. There is no evidence produced by the appellant-wife to show that every month the respondent-husband pays the amount in the end of the month or in the beginning of the month. However, the amount has to be paid in regular intervals at appropriate time, otherwise, it will be very difficult for the appellant-wife to maintain herself, family and child born to them. Since the quantum of amount of maintenance paid by the respondent-husband is not disputed, we are of the considered view that the amount of Rs.26,000/- per month, hitherto paid as interim maintenance, has to be paid by the respondent-husband on or before 5th of every English calendar month.

9. The Court below observed that since under Section 12 of the Legal Services Act, the women are entitled to free legal aid, the appellant-wife is not entitled to get legal expenses from the respondent-husband. This finding of the Court below is not correct, in view of Section 24 of the Hindu Marriage Act, which provides for payment of amount towards the legal proceedings to either the wife or husband on his/her application. Since there is Legal Aid, it is not proper on the part of the Court below to direct the appellant-wife to approach the Legal Services Authority for legal expenses.

10. In this connection, it is worthwhile to quote Section 24 of the Hindu Marriage Act, as follows:

"Section 24: Maintenance Pendente lite and expenses proceedings: Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

11. From the above quoted Section 24 of the Hindu Marriage Act, it is clear that either the wife or husband, on application, is entitled to get the amount towards the litigation expenses, if he or she has no independent income sufficient for her or his support. In this case, the appellant-wife is not having sufficient income for litigation expenses, and the amount of Rs.26,000/- admittedly paid by the respondent, is only for the maintenance of the appellant-wife and the child. Hence, we are of the considered view that it is appropriate to direct the respondent-husband to pay a sum of Rs.10,000/- towards the legal expenses of the appellant-wife for conducting the case before the Court below.

12. Accordingly, while partly allowing the appeal, we direct as follows:

(a) The respondent-husband shall, from the date of petition, i.e. I.A.No.2347 of 2014 in O.P.No.1565 of 2013, continue to pay Rs.26,000/- (Rupees twenty six thousand only) per month to the appellant-wife and child, but strictly the said amount shall be paid on or before 5th of every English calendar month. Arrears in payment of Rs.26,000/- per month as directed above, if any, shall be paid by him within three weeks from the date of receipt of a copy of this judgment, and

(b) the respondent-husband shall pay Rs.10,000/- (Rupees ten thousand only) as legal expenses to the appellant-wife, within a period of three weeks from the date of receipt of a copy of this judgment.

No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS

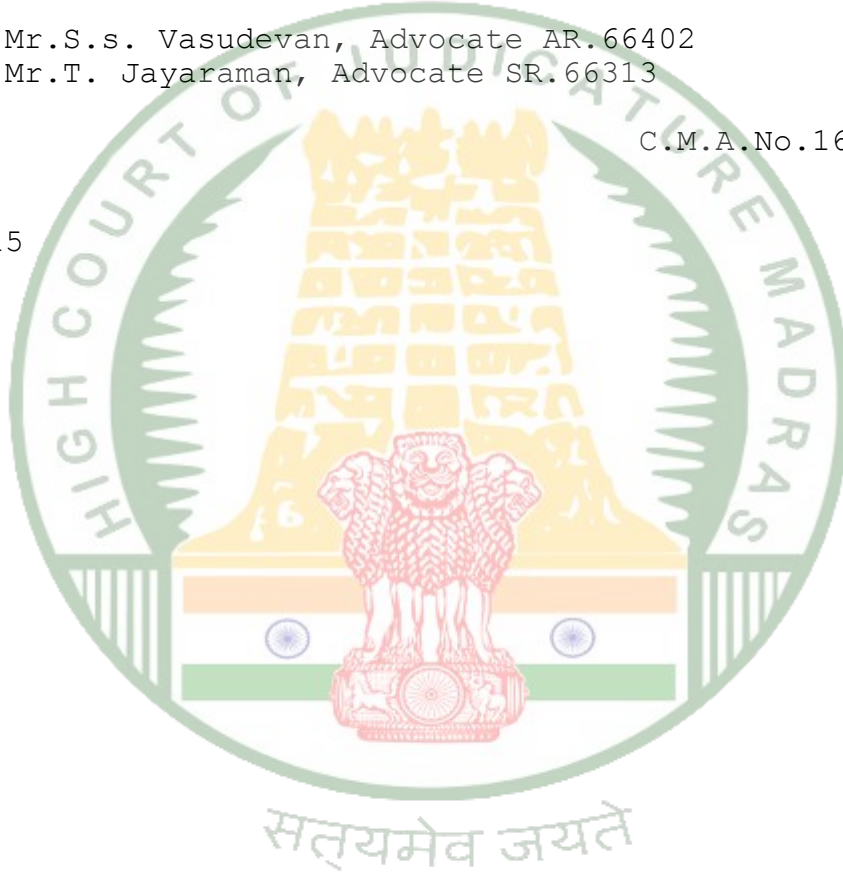
Copy to

1. The Third Additional Principal Judge,
Family Court, Chennai.
2. Record Keeper, V.R. Section,
High Court, Madras.

+ 1 cc to Mr.S.s. Vasudevan, Advocate AR.66402
+ 1 cc to Mr.T. Jayaraman, Advocate SR.66313

C.M.A.No.1648 of 2015

SR(CO)
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