

In the High Court of Judicature at Madras

Dated: 25.09.2015

Coram:

The Hon'ble Mr.Justice S.MANIKUMAR
and
The Hon'ble Mr.Justice M.VENUGOPAL

C.M.A.No.2162 of 2015
and M.P.No.1 of 2015

B.Saranya Devi ..Appellant/Petitioner/Respondent

Vs.

P.Kamalakannan ..Respondent/Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the Fair and Decretal Order dated 06.08.2015 made in I.A.No.1755 of 2014 in O.P.No.4433 of 2012 on the file of the Learned Principal Judge, Family Court, Chennai.

For Appellant : Mr.C.Sankar

J U D G M E N T

[Judgment of the Court was delivered by
M.VENUGOPAL, J.]

The Appellant/Petitioner/Respondent has focused the present Civil Miscellaneous Appeal as against the order dated 06.08.2015 in I.A.No.1755 of 2014 in O.P.No.4433 of 2012 passed by the Learned Principal Judge, Family Court, Chennai.

2.The Learned Principal Judge, Family Court, Chennai, while passing the Impugned Order in I.A.No.1755 of 2014 (filed by the Appellant/Petitioner/Respondent) in O.P.No.4433 of 2012 had resultantly allowed the Application/Petition in part by directing the Respondent/Husband to pay an amount of Rs.3000/- (Rupees Three Thousand Only) per month as interim alimony from the date of filing of I.A.No.1755 of 2014 i.e., on 30.07.2014 till the date of disposal of the main O.P.No.4433 of 2012.

3.Assailing the validity and legality of the impugned order dated 06.08.2015 in I.A.No.1755 of 2014 in O.P.No.4433 of 2012 passed by the Learned Principal Judge, Family Court, Chennai, the Learned counsel for the Appellant/Wife/Respondent urges before this Court that the Learned Principal Judge, Family Court, Chennai had failed to take into account that the Appellant/Petitioner/Wife is not working at present and also, she is fully depend upon her father for her day-today livelihood.

4.The Learned counsel for the Appellant contends that a sum of Rs.3000/- per month ordered towards monthly maintenance by the Learned Principal Judge, Family Court, Chennai in I.A.No.1755 of 2014 by means of an order dated 06.08.2015, had not taken into consideration the economic conditions of the society and as such, the said sum of Rs.3000/- determined as monthly maintenance to be paid by the Respondent/Husband is too low and it would not be sufficient for the Appellant to carry on her life for the entire month.

5.The Learned counsel for the Appellant proceeds to put forward an argument that the Respondent/Husband had not produced any documentary evidence to establish that his monthly income was Rs.6000/- and this vital aspect of the matter was discarded by the Learned Principal Judge, Family Court, Chennai at the time of passing the impugned order.

6.It is to be relevantly pointed out that in I.A.No.1755 of 2014 in O.P.No.4433 of 2012, the Appellant/Wife/Petitioner had claimed a sum of Rs.20,000/- per month as interim maintenance from the Respondent/Husband. The Appellant/Wife in I.A.No.1755 of 2014 had averred that 'the Respondent/Husband is owning two Ace model commercial vehicles and earning a sum of Rs.50,000/- per month, so the Respondent has sufficient means to maintain himself and he ought to have maintained me as a husband etc.'

7.On a perusal of the contents of the counter filed by the Respondent/Husband to I.A.No.1755 of 2014 in O.P.No.4433 of 2012 unerringly points out that the Respondent/Husband had categorically averred that "... now he is employed as a driver and earning a sum of Rs.6000/- per month and living with respect and self satisfaction etc'. Also, he had stated that 'it is false that he is owning two Ace model commercial vehicles and earning a sum of Rs.50,000/- per month'.

8.It is to be noted that the Appellant/Respondent/Wife had also filed I.A.No.1754 of 2014 in O.P.No.4433 of 2012 before the Learned Principal Judge, Family Court, Chennai,

claiming a sum of Rs.20,000/- towards 'Litigation Expenses' from the Respondent/Husband. Significantly, the Appellant/Wife had filed I.A.No.1754 of 2014 and I.A.No.1755 of 2014 claiming Litigation Expenses and Interim Maintenance from the Respondent/Husband under Section 24 of the Hindu Marriage Act, 1955.

9.It is to be borne in mind that under Section 24 of the Hindu Marriage Act, 1955 only the wife or husband is entitled to 'pendente lite' maintenance. It cannot be gainsaid that the award of maintenance 'pendente lite' and expenses of proceedings under Section 24 of the Hindu Marriage Act, 1955 is the pure discretion of Court of Law, which it should exercise judicially, of course, on sound legal principles and not by caprice or humour as per decision Mukan Kunwar V. Ajeetchand [AIR 1958 (Raj) at page 322]. As a matter of fact, Section 24 of the Hindu Marriage Act, 1955 gives wide power, flexible and elastic to do justice in a given case as per decision Dev Dutt Singh V. Rajni Gandhi [AIR 1984 (Del) at page 320].

10.The general rule is that wife is a privilege person in a matrimonial proceeding and if she has no independent income for a support and the maintenance claimed, invariably a Court of Law will allow her maintenance during the pendency of main original proceedings. Further, under Section 24 of the Hindu Marriage Act, a spouse is entitled to only an amount which is reasonable and necessary for her or his support, as the spouse of the opposite party after deduction there from if any of the Applicant/Spouse's income as per decision Utpal Banerjee V. Manjula Banerjee [1992 Calcutta Weekly Notes at page 1123].

11.In reality, the Wife is entitled to a 'Revision' of maintenance sum commensurate with the price level as per decision Sudipta Mukherjee V. Dibyendu Mukherjee [1998 (2) Calcutta Weekly Notes at page 38].

12.Added further, the expenses of proceedings must be awarded with reference to necessary charges to be incurred for prosecuting the matrimonial cause.

13.A Court of Law while dealing with an Application/Petition under Section 24 of the Hindu Marriage Act relating to interim maintenance claim is to consider the following aspects i)a status of the parties ii)their respective Requirements/Needs and iii)capacity of the Husband to pay considering his reasonable expenses for his own maintenance and of those his obliged under the Law and statutory but involuntarily payment or deductions as the case

may be, in the considered opinion of this Court. Moreover, if the husband is an able body person capable of working, then he is bound to maintain his wife and to pay maintenance amount during the pendency of the main proceedings under Section 24 of the Hindu Marriage Act, 1955, even if he has no income.

14.A Court of Law while fixing the quantum of monthly maintenance payable by one spouse or another cannot fix the same in an excessive or extortionate as per decision Jasbir Kaur Sehgal V. District Judge, Dehradun and others [1997 (7) SCC at page 7].

15.Be that as it may, as far as the present case is concerned, not only the Appellant/Wife but also on the side of the Respondent/Husband, no documentary evidence was produced to establish what exactly the monthly income earned by the Respondent/Husband. In the absence of any documentary evidence being produced before the Learned Principal Judge, Family Court, Chennai in I.A.No.1755 of 2014, the Learned Principal Judge, Family Court, Chennai in I.A.No.1755 of 2014 in O.P.No.4433 of 2012 had rightly fixed the monthly maintenance sum as Rs.3000/- to be payable by the Respondent/Husband to the Appellant/Wife. Viewed in that perspective, the order passed by the Learned Principal Judge, Family Court, Chennai in I.A.1755 of 2014 in O.P.No.4433 of 2012 dated 06.08.2015 in determining the monthly maintenance of Rs.3000/- per month to be paid to the Appellant/Wife by the Respondent/Husband does not suffer from any material irregularity or patent legal infirmities in the eye of Law. Consequently, the Civil Miscellaneous Appeal fails.

16.In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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ASSISTANT REGISTRAR(CS-II)

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SUB-ASSISTANT REGISTRAR

DP

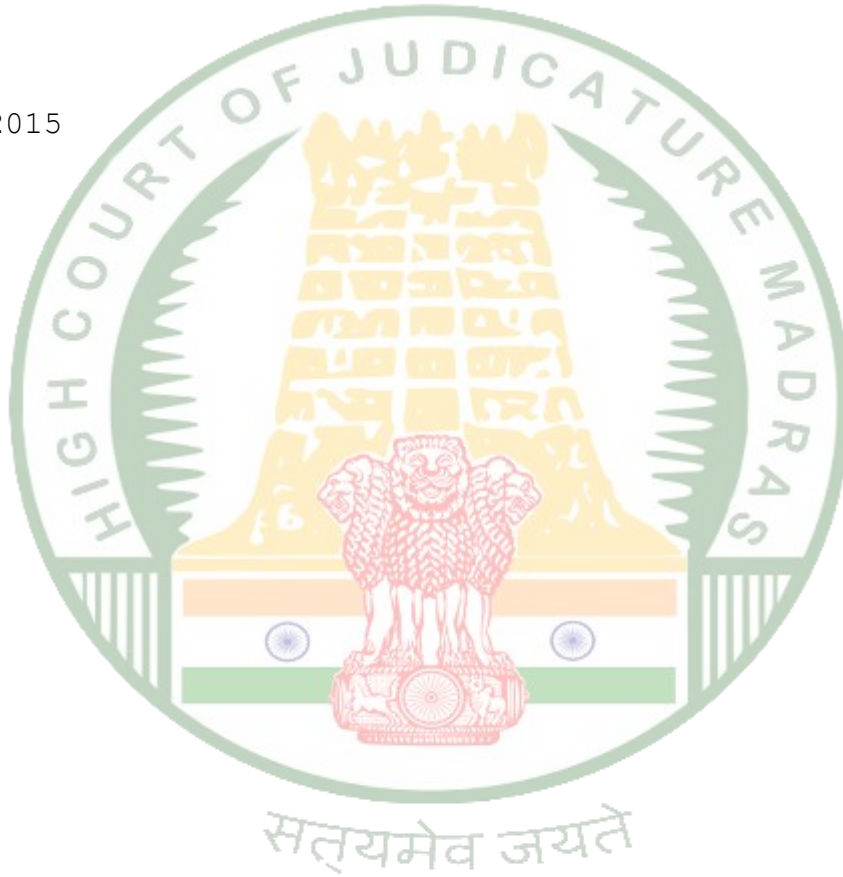
To

The Principal Judge Family Court,
Chennai.

+1 CC to MR. C.Sankar ADVOCATE. SR.NO. 52203

C.M.A.No.2162 of 2015
and M.P.No.1 of 2015

CO-VGI
JD 20/10/2015



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