

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.6.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Civil Miscellaneous Appeal No.688 of 2015

K.Uma Priya

...Appellant/Respondent

Vs.

Yogendra Mani Balan

...Respondent/Petitioner

Appeal against the order dated 19.01.2015 passed in I.A.No.2548 of 2013 in O.P.No.1321 of 2013 on the file of the III Additional Family Court, Chennai.

For Appellant : Mr.Praveen Alexander

For Respondent : Mr.N.Nanmaran

J U D G M E N T
(Delivered by V.Ramasubramanian,J.)

This appeal arises out of the dismissal of a petition filed by the appellant-wife for payment of interim maintenance.

2. Heard Mr.Praveen Alexander, learned counsel for the appellant and Mr.N.Nanmaran, learned counsel for the respondent.

3. The respondent-husband filed a petition in O.P.No.1321 of 2013 for dissolution of his marriage with the appellant on the ground of cruelty. During the pendency of the petition, the appellant wife filed I.A.No.2548 of 2013 claiming interim alimony in a sum of Rs.20,000/- and litigation expenses of Rs.10,000/-. The Family Court dismissed the said application by an order dated 19.01.2015. Aggrieved by the said order, the wife has come up with the above appeal.

4. It is seen from the order of the Family Court that the

Tribunal rejected the claim for interim maintenance on the sole ground that the wife was employed in a company by name Aparajitha Dynamic Synergies Private Limited, but resigned her job on 16.8.2013, solely for the purpose of claiming interim alimony. Therefore, the wife is before this Court.

5. It is not denied that the wife was employed. Though the question as to whether she was employed in Aparajitha Dynamic Synergies Private Limited or in TVS Lucas, remains a question of dispute, the fact that she was employed up to 16.8.2013 is not denied.

6. According to the wife, she resigned on 24.8.2013 only for the purpose of claiming interim maintenance. But, the stand of the husband is that she continues to be in employment even till date. In other words, if the stand taken by the husband is accepted, even then, the findings of the Tribunal that the wife resigned her job on 16.8.2013 was wrong.

7. The mere fact that a lady was employed and that she resigned before coming up with an application for interim maintenance will not, by itself, deprive her of the claim for maintenance.

8. As a matter of fact, the advertisement issued by the husband in a matrimonial web portal, showing his annual income to be between 3.00 to 4.00 Lakhs was relied upon by the wife. But, the husband took a stand that after marriage, the turnover in the business came down drastically due to matrimonial disputes and that ultimately, the husband became unemployed. Therefore, the fact that fortunes fluctuate in life for both parties cannot be denied. Therefore, the only ground on which the Family Court rejected the claim for maintenance in entirety does not appear to be fair and proper.

9. We are conscious of the decision rendered by the Supreme Court in Mamtha Jaiswal v. Rajesh Jaiswal [2000 (4) MPHT 457], wherein the Supreme Court held that a wife, who is well qualified and fighting a divorce petition, cannot be permitted to sit idle and be a burden for the husband. But, we do not think that the said decision lays down a law on the point that every person capable of earning and every person who has an employment potential cannot claim maintenance. The potential for employment is completely different from the question where somebody is actually earning income or not. If despite having a potential for employment, a person is unable to find job, the blame cannot be shifted entirely on such person. In a country where unemployment galores, there is no presumption that persons who do not get employment either do not have the employment

potential or do not wish to get employed. Therefore, the reasoning given by the Family Court cannot be accepted.

10. Once we find that the rejection of the claim of the wife for interim maintenance in toto is not proper, then the next question that arises is as to whether we should remit the matter back to the Family Court for arriving at the quantum of interim alimony or whether we would ourselves fix the quantum. Ideally, remitting the matter back to the Family Court for fixation of quantum of interim alimony would be the most proper thing. But, in view of the fact that the main petition for divorce is pending for more than two years and in view of the fact that there has been several cases before several forums between the parties, we think it would be appropriate to fix a quantum of alimony, so that the parties can go ahead with the trial and get their disputes resolved either through adjudication or through conciliation within a time frame.

11. In view of the above, this appeal is allowed, setting aside the order of the Family Court and fixing the interim alimony payable to the appellant-wife as Rs.5,000/- (Rupees five thousand only) per month. She will be entitled to this amount from the date of the petition. The Family Court is directed to dispose of the main O.P. within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

kpl

To

The Judge,
III Additional Family Court,
Chennai.

4 CCs to Mr.N.Nanmaran, Advocate SR.No.31248
1 CC to Mr.Praveen Alexander, Advocate SR.No.30921

CMA No.688 of 2015

JSV (CO)
PSI (15.07.2015)