

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.2221 of 2014
& Cross Objection No.101 of 2014
and M.P.No.1 of 2015 in C.M.A.No.2221 of 2014

Aditya Jayaraman .. Appellant in C.M.A.
and respondent in Cross Objection /
Petitioner

Vs.

Subhashini Kalayana Sundaram .. Respondent in C.M.A.
and appellant in Cross Objection/
Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 and Cross Objection filed under Order XLI Rule 22 of CPC, against the fair and decretal order dated 27.06.2014 in I.A.No.309 of 2011 in O.P.No.4526 of 2010 on the file of the First Additional Family Court, Chennai.

For appellant in CMA and respondent in Cross Objection:

Mr.A.Muthukumar

For respondent in CMA and appellant in Cross Objection:

Ms.S.L.Kalavathy

COMMON JUDGMENT

(The Judgment of the Court was delivered by V.Dhanapalan,J)

Though M.P.No.1 of 2015 in C.M.A.No.2221 of 2014 and Cross Objection are listed for disposal, by consent of the learned counsel appearing for the parties, the Civil Miscellaneous Appeal and Cross Objection are being disposed of by this Common Judgment.

2. Heard Mr.A.Muthukumar, learned counsel for the appellant in C.M.A. and also the respondent in the Cross Objection and Ms.S.L.Kalavathy, learned counsel for the respondent in C.M.A. and also for the appellant in the Cross Objection.

3. The Civil Miscellaneous Appeal and the Cross Objection are filed by the husband and wife respectively, challenging the order dated 27.06.2014 passed in I.A.No.309 of 2011 in O.P.No.4526 of 2010, wherein the Family Court partly allowed the petition and directed the appellant-husband as follows:

(i) to pay a sum of \$1500 per month towards interim maintenance from the date of petition, i.e. 22.01.2011;

(ii) to pay a sum of Rs.30,000/- towards litigation expenses;

(iii) to pay the arrears amount immediately and

(iv) to pay the interim maintenance on or before 5th of every English Calendar month.

4. Before the Family Court, the husband filed the Original Petition for divorce on the ground of cruelty. Pending the said O.P., the wife filed the said I.A., claiming interim maintenance. The appellant-husband married the respondent-wife on 02.07.2008 on arranged marriage and she joined him on 17.07.2008 at New Jersey in U.S. She is a B.Com. Graduate with MBA and not employed. Even after her marriage, she was house-wife. She obtained Green Card during August 2009. She temporarily worked as Tax Preparer at Liberty Tax Service and was advised to get enrolled in the Agent Course so that she can get permanent job and she completed that Course in October 2010. Subsequently, she applied for C.P.A. Board for writing Exams and requested her husband to permit her to go to India to see her parents and come back so that she could concentrate on her studies from March 2011 and her husband arranged for her travel "to and fro". She should have left India on 19.01.2011 and on his consent only, she left U.S. on 23.10.2010. Until then, there was no misunderstanding between them, nor was there any dispute. The appellant-husband backstabbed her to sign the petition. But she is willing to join him in her matrimonial home at New Jersey and to retain permanent residential status in U.S. She should have left India before March 2011 and as she has already applied for CPA Board Exams and had to start her studies in March 2011, she is making arrangements to leave before March 2011, otherwise, she will be losing her Green Card status. She has no independent source of income. The appellant-husband is employed as Head Global Career in Tata Communication and it is stated that his annual salary is \$142500. Since the respondent-wife prepared his tax returns, she is personally aware of the same. It is further stated that he is owning an apartment in New Jersey and also owns a family house at Anna Nagar and has no commitments. It is alleged that he is the only son and his sister already got married and settled in America. His father already expired and his mother is a retired school teacher getting monthly pension. The respondent-wife is

presently living in her parents' house with his brother. Apart from having a share in that house, his mother owns a flat in Malleswaram, Bangalore and another house at Mogappair and so, her mother is not depending on her son, the appellant-husband monetarily. It is alleged that the respondent-wife has to pursue her studies in U.S, which she joined on account of the appellant and his mother's persuasion. Hence, to live and maintain herself, the respondent-wife requires a minimum \$6000 per month. She has no income of her own. Further, after her return from U.S, she may be required to appear before Court personally for giving evidence and in such event, her husband has to bear the travelling expenses. Hence, she filed the petition before the Court below seeking interim maintenance pending O.P.

5. It is the contention of the appellant-husband that their marriage was not a normal one as portrayed by the respondent-wife. The respondent-wife has not disclosed in her petition that the marriage was not consummated and there were problems right from the beginning because of suppression of material facts and fraud played by her and the members of her family. The medical records proves that the steroids taken by her for an incurable disease of her eyes, caused her to become unwomanly. This marriage is the second marriage for both of them and the respondent-wife's first marriage lasted for a few days before separation. This was also because of the fraud played in her earlier marriage. She has filed the petition only to extort money for her. She seeks a monthly maintenance of Rs.2,70,000/- without disclosing her need for such an amount. The husband sponsored her to U.S. and got her Green Card for permanent residency. She was working when she lived in U.S. from 2008 to 2010. The husband financed her academics when she did her Agent Course. She left her matrimonial home with no intention for returning in October 2010. The fact that she applied for her studies for her CPA, after separation, will go to show that she had these plans made prior to her leaving the U.S.A. in October 2010. She used him to get her Green Card and further her education and when that was done, she came to India with an intention to opt out of the marriage. The petition for divorce was filed because of the behaviour of her and her family, who suppressed the material facts. She did not disclose where she now resides in U.S.A. or into which University she has got admission. It is only notional that she applied for her C.P.A and making arrangements to leave. The apartment in New Jersey was bought by her under a mortgage. His mother was widowed at an extremely young age and spent her entire earnings on his education and now he supports her. She cannot at this age be supported by her aged parents and retired siblings. The demand of Rs.50,000/- as litigation expenses is exaggeration. The basis for the demand of interim alimony of US \$ 6000 which amounts to Rs.2,70,000/- per month, has not been disclosed. The petition for interim maintenance is devoid of merits and may be dismissed.

6. Upon considering the above pleadings and the document, namely Ex.R-1 salary certificate of the appellant-husband, filed, the Family Court found that the allegations made against each other are to be proved during trial in the main O.P., and considering the fact that she is not employed presently and that the appellant-husband is legally bound to maintain his wife, the Family Court partly allowed the petition as noted above.

7. Learned counsel for the appellant-husband mainly assailed the order of the Family Court on the ground that the amount awarded by the Court below is excessive and exorbitant and the same is against the established and settled legal principles. Learned counsel for the appellant disputes that the wife is undergoing her studies and in fact, she has been in India for the last four years. He also contended that whatever the income derived in US for an employee, it attracts the Income Tax and other local tax and therefore, the Take Home Salary of the appellant-husband is less than what actually he earned as focussed before the Family Court, which is abnormal and hence, the appellant-husband is unable to meet out the amounts awarded by the Family Court.

8. On the other hand, learned counsel for the respondent-wife contended that the appellant-husband is drawing a salary of more than 12,000 US \$ per month, and therefore, claiming interim maintenance as per the income derived by him and as ordered by the Family Court, is insufficient to maintain herself and to continue with her life and status in U.S., and hence prayed that the amount awarded by the Family Court may kindly be enhanced to a reasonable extent.

9. We have heard the learned counsel appearing for the parties and perused the material documents available on record.

10. The order in question is an order of interim maintenance of \$ 1500 per month from 22.01.2011, Rs.30,000/- towards litigation expenses and to pay the interim maintenance on or before 5th of every English Calendar month, with a further direction to pay the arrears of interim maintenance immediately.

11. It is seen that the claim of the respondent-wife before the Family Court was for a direction to pay a sum of 6,000 \$ per month towards interim maintenance and Rs.50,000/- for litigation expenses. The marriage between both parties was solemnised on 02.07.2008 , which was an arranged marriage. This fact is not disputed. It is contended by the husband that the marriage was not consummated and there were problems right from the beginning because of suppression of material facts. Hence, he moved the Family Court for divorce by filing the Original Petition on the ground of cruelty.

12. Though it is claimed that the amounts awarded by the Family Court are exorbitant and hence, it has to be interfered with, the respondent-wife has filed Cross Objection for enhancement of the amounts. Since she has to maintain herself and her status, the amount as focussed in Indian money value, would differ in value and therefore, the husband's salary after deduction of Income Tax and other local tax has to be considered, which would be very less than the gross salary, and his Take Home Salary is very less, which is a matter to be taken into account while determining the proper maintenance.

13. Therefore, taking into consideration the pleadings of the respective parties and in order to meet the ends of justice and also taking into consideration the balance of convenience between the parties and the underlying factors and the factual aspects involved in the case between the parties, we are of the considered opinion that the amount awarded by the Court below for interim maintenance shall be reduced to \$1000 per month, and the same shall be paid from 22.01.2011 as ordered by the Court below, besides confirming the litigation expenses awarded at Rs.30,000/-. It is stated that the appellant-husband has complied with the order of this Court by paying 50% of the amounts awarded by the Court below and the appellant-husband shall pay the balance 50% of the arrears of interim maintenance at \$1000 per month from 22.01.2011 by adjusting the amount already paid by virtue of interim order dated 22.08.2014 passed in M.P.No.1 of 2014 in C.M.A.No.2221 of 2014 and he shall pay the balance litigation expenses also and shall also continue to pay the said amount of \$1000 per month on or before 5th of every English Calendar month till the disposal of the main Original Petition before the Family Court.

14. The appellant-husband has also filed M.P.No.1 of 2015 before this Court praying for a direction to the Court below to dispose of the said O.P. on merits and learned counsel for the appellant also prayed for expeditious disposal of the said O.P. Taking into consideration the urgency involved in the matter, we direct the Family Court to take up O.P.No.4526 of 2010 and dispose of the same, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this judgment and report the disposal to this Court positively.

15. With the above modification in the interim maintenance amount and the observations and directions as above, the Civil

Miscellaneous Appeal and the Cross Objection are disposed of. No costs. The Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

CS

Copy to

1. The First Addl. Principal Judge, Family Court, Chennai.

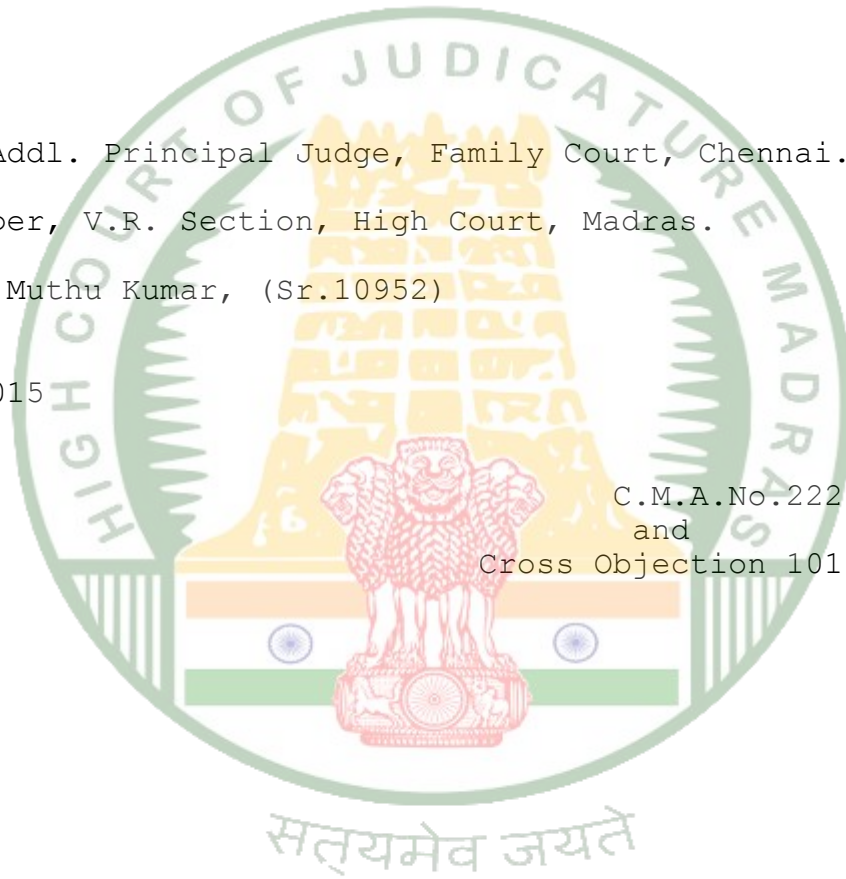
2. Record Keeper, V.R. Section, High Court, Madras.

+1 CC to Mr.A.Muthu Kumar, (Sr.10952)

CO-TEJ

ths : 20.03.2015

C.M.A.No.2221 of 2014
and
Cross Objection 101 of 2014



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