

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.1450 of 2015

and

M.P.No.1 of 2015

V.Sreenivasigan Appellant/Respondent

Vs

V.Seethalakshmi ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, challenging the order dated 11.04.2014 in I.A.No.1365 of 2013 in H.M.O.P.No.1085 of 2012 on the file of Family Court, Coimbatore.

For appellant : Mr.P.V.Satyarajan for
Mr.Govind Chandrasekhar

For respondent : Mr.G.Murugendran

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The husband has come forward with this appeal, challenging the order dated 11.04.2014 made in I.A.No.1365 of 2013 in H.M.O.P.No.1085 of 2012 on the file of Family Court, Coimbatore, wherein, the husband's application praying for interim maintenance was rejected by the court below holding that the person who voluntarily incapacitates himself from earning is not entitled to maintenance and that in a petition filed under Section 24 of the Hindu Marriage Act (hereinafter called as the "Act"), the claim for maintenance of the minor children is not maintainable.

2. The wife filed H.M.O.P.No.1085 of 2012 before the Family Court, Coimbatore seeking divorce on the ground of cruelty. The husband filed counter and also filed petition under Section 24 of the Act for interim maintenance from her wife, stating that she is working as a Teacher and earning a sum of Rs.33,000/- per month. According to the husband, in maintaining himself and

children, he is indebted to many persons and is finding it difficult to pay school fees for the children.

3. On a direction issued by this Court on 23.02.2016 and thereafter on 29.02.2016 for appearance of both husband and wife, today both the appellant/husband and respondent/wife are present.

4. According to the appellant/husband, he is finding it difficult to maintain day to day life and children education, more so in view of the deluge, that occurred during November/December 2015. He pleaded that even before filing the petition, the wife contributed nothing towards maintenance and education of the children. He further submitted that he himself is raising the two children and educating them, apart from his business activity and in such circumstances, the wife, by earning a good income, is not showing any interest towards raising children or even paying the school fees.

5. On the other hand, the wife submitted that she is a physically challenged person and also obtained housing loan from Banks and is finding it difficult to manage her own expenses. The wife also undertook that the properties purchased by her are only for her children and therefore, she will settle the same to her children after her life time. The counsel pleaded that the petition by husband for maintenance is erroneous.

6. This court, carefully perused the submissions made on both sides and the material papers placed on record.

7. At the outset, we are not agreeable to the decision rendered by the court below insofar as it mandates that only in a petition under Section 26 of the Act, interim maintenance can be awarded to minor children. Our view is fortified by the decision of the Supreme Court in Jasbir Kaur Sehgal Vs. District Judge, Dehradun [AIR 1997 SC 3397]. The Supreme Court in paragraph Nos.6 and 8 held as under:-

" 6. Wife says that the husband has not given true account of his assets and income and has rather suppressed the same. Though the wife has not been able to give any specific evidence to support her contention but circumstances show that the husband has not given true state of affairs of his income. He has pleaded that both his wife, and his eldest daughter are earning Rs.10,000/- per month but there is no basis for such an allegation. The fact remains that the wife has no source of income and she is also maintaining her

eldest unmarried daughter. Under the Hindu Adoptions & Maintenance Act, 1956 it is the obligation of a person to maintain his unmarried daughter if she is unable to maintain herself. In this case since the wife has no income of her own, it is the obligation of the husband to maintain her and her two unmarried daughters one of whom is living with wife and one with him. Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section, in our view, cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife along and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field.

7.

8. Wife has no fixed abode of residence she says, she is living in Gurudwara with her eldest daughter for safety. On the other hand husband has sufficient income and a house to him. Wife has not claimed any litigation expenses in this appeal. She is aggrieved only because of the paltry amount of maintenance fixed by the courts. No set formula can be laid for fixing the amount of maintenance. It has, in very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under the law and statutory but involuntary payments or deductions. Amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life, she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite at the rate of

Rs.5,000/- per month payable by respondent-husband to the appellant-wife."

Even though Section 24 of the Hindu Marriage Act speaks about maintenance pendente lite to the wife or husband, as the case may be, since it is the duty of either of the spouse to maintain the children, it cannot held that but for an application under Section 26 interim maintenance cannot be awarded to children.

8. However, it is not the case of the appellant that he is suffering from any disability or ailment. Having capacity to work and not working falls under the maxim of Anglo-Saxon jurisprudence that "no person can be allowed to incapacitate himself". He cannot afford to incapacitate himself and sustain an application under Section 24 of the Act. Therefore, in our considered opinion, the appellant/husband is not entitled to any maintenance.

9. This Court, taking note of the occupation of the wife and the agony of the husband, who is maintaining, taking care of the children and educating them, feels it appropriate to pass the following order:-

(i) The respondent/wife is directed to pay school fees for the children regularly without any default directly to the school/institution, where the children are studying.

(ii) The respondent/wife shall not alter, alienate or disburse the property purchased by her. The wife's undertaking that her property is only meant for her children is recorded.

10. The Family Court, Coimbatore is directed to conduct trial and dispose of the H.M.O.P., within a period of three months from the date of receipt of a copy of this order.

11. This Civil Miscellaneous Appeal is disposed of on the above terms. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

nvsri

Sub Assistant Registrar

To

The Presiding Officer,
Family Court, Coimbatore.

C.M.A.No.1450 of 2015

UG(CO)
CA(25/04/2016)