

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 04.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MRS.JUSTICE S.VIMALA

C.M.A.No.726 of 2016 and
C.M.P.No.5894 of 2016

Shanmugasundaram

.... Appellant

- Vs -

Sudha

.... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the order dated 02.02.2016 in I.A.No.2287 of 2014 in H.M.O.P.No.617 of 2010, on the file of the Principal Family Court, Coimbatore.

For Appellant : Mr.C.R.Prasanan

For Respondent : Mr.S.Chandrasekar

J U D G M E N T

(The Judgment of the Court was delivered by S.VIMALA, J.)

The Principal Family Court, Coimbatore, ordered maintenance pendente lite at Rs.15,000/- per month and Rs.5,000/- towards cost of litigation to the wife/respondent, as contemplated under Section 24 of the Hindu Marriage Act. This order is under challenge by the husband in this Civil Miscellaneous Appeal.

2. It is the contention of the learned counsel for the appellant/husband that the financial capacity of the husband does not permit him to pay such a sum of Rs.15,000/- as monthly maintenance and therefore, it is a case for reduction of the quantum of maintenance.

3. The plea of the appellant/husband is resisted by the learned counsel for the respondent/wife, by raising contentions that the Court passed the order of maintenance only after

considering a) the nature of job done by the husband; b) his earnings from the business and c) personal earnings by conducting yoga class and therefore, when the income of the husband is supported by evidence, no case for reduction is made out.

4. In order to appreciate the contentions raised on both sides, it is necessary to look into the provisions of Section 24 of the Hindu Marriage Act, 1955 and the said provision reads as under:

"24. Maintenance pendente lite and expenses of 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.

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]"

5. From the perusal of the provisions, it is evident that, while deciding the issue relating to maintenance, the factors to be taken care of by the Courts include a) whether the claimant has got independent income sufficient for her maintenance or support; b) the reasonable wants of the claimant; c) the income, property and liability of the respondent; d) the financial capacity of the respondent to pay the amount claimed and e) the necessary expenses of the proceedings.

6. The award of maintenance under Section 24 of the Hindu Marriage Act, 1955, by its very nature is temporary and the award would be operational only till the conclusion of the proceedings. Therefore, a detailed and elaborate enquiry is not contemplated. The Court can pass orders based upon the averments made in the affidavit and in case of utmost necessity can permit cross examination of either party, in respect of their affidavit.

7. From the discussions in I.A.No.2287 of 2014 in

H.M.O.P.No.617 of 2010, it is apparent that the enquiry has been conducted in an elaborate way by examining six witnesses and marking 15 documents on the side of the wife and by examining three witnesses and marking 8 documents on the side of the husband. When the relationship between the parties is an admitted fact and when the orders of maintenance passed would remain in force for a limited period, the Courts are not expected to indulge in roving enquiry for years together.

8. In order to save time and ensure timely justice, the Courts need to follow expeditious methods. At this juncture, it would be appropriate to highlight the guidelines issued by the Delhi High Court in cases filed seeking maintenance, reported in AIR 2015 Delhi 53 (Kusum Sharma vs. Mahinder Kumar Sharma) in which, the Honourable Justice J R Midha directed that, detailed affidavits, along with copies of relevant documents, have to be submitted by both parties, at the time of divorce proceedings, so that maintenance orders can be passed by courts within 60 days of the divorce proceeding being initiated on the basis of "true income".

8.1. The court held, "Maintenance is not merely a legal right, it is part and parcel of basic human rights. For weaker sections, it is a problem in the sense that their very survival rests on the maintenance," while adding that "lengthy trial in matrimonial proceedings is uncalled for and contrary to the spirit of the Hindu Marriage Act".

8.2. Directing all family courts to ensure that the affidavits are filed, the Court said the directions were "necessitated, because the parties in the matrimonial litigation do not disclose their true income and the claims of maintenance are dragged up to two years and the court, finding it difficult to determine the true income, tends to fix maintenance by drawing presumptions".

8.3. The documents which are identified for submission along with the affidavit includes copies of bank account statements of all accounts for the past three years, income tax returns along with statement of income for three years, wealth tax returns, cost to company certificate, CIBIL certificate, balance sheets and profit and loss accounts of companies, lease deeds and dividend certificates. Details of "lifestyle" indicators like number of domestic helps, mode of travel and category of hotels used for stay also have to be submitted with the affidavit.

8.4. The court even directed that, "the aforesaid procedure be followed in all cases relating to maintenance, including

cases under the Hindu Marriage Act, 1955, Protection of Women from Domestic Violence Act, 2005, Hindu Adoption and Maintenance Act, 1956, Special Marriage Act, 1954, The Indian Divorce Act, 1869 as well as Section 125 Cr.P.C.”.

8.5. The Court has directed family courts to remain vigilant to ensure that the affidavit “is not reduced to mere ritual” and to “scrutinize the affidavit threadbare.”

9. This is high time that the procedure as suggested by the Delhi High Court is a model to be emulated by all the Courts dealing with matrimonial disputes, as a worthy specimen.

10. The family Court has considered essential factors, including the financial ability of the husband to pay the maintenance and only based on that passed the order of maintenance. Therefore, the order of the family Court is not liable to be interfered with.

11. It is contended that the wife filed the application for interim maintenance while the evidence was in progress and therefore, the intention of the wife is to drag on the proceedings and having regard to the hidden agenda, there should be a direction for speedy disposal, to which the learned counsel for the respondent/wife has no objection.

12. Perusal of the records reveals that the application for maintenance has been filed while the oral evidence was being recorded. The one of the objects of granting maintenance to the wife is to enable her to contest the case on merits. But, there is no impediment to file the application at a stage, where the evidence is in progress. However, those cases must be brought up for early hearing so that the dilatory tactics, if any, can be thwarted.

13. Having regard to the facts and circumstances of this case, the learned Principal Judge, Family Court, Coimbatore is directed to dispose of H.M.O.P.No.617 of 2010, within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to co-operate for the early disposal of the original petition.

14. In the result, the appeal stands disposed of in the above terms. Consequently, connected miscellaneous petition is

closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

r n s / g l n

To

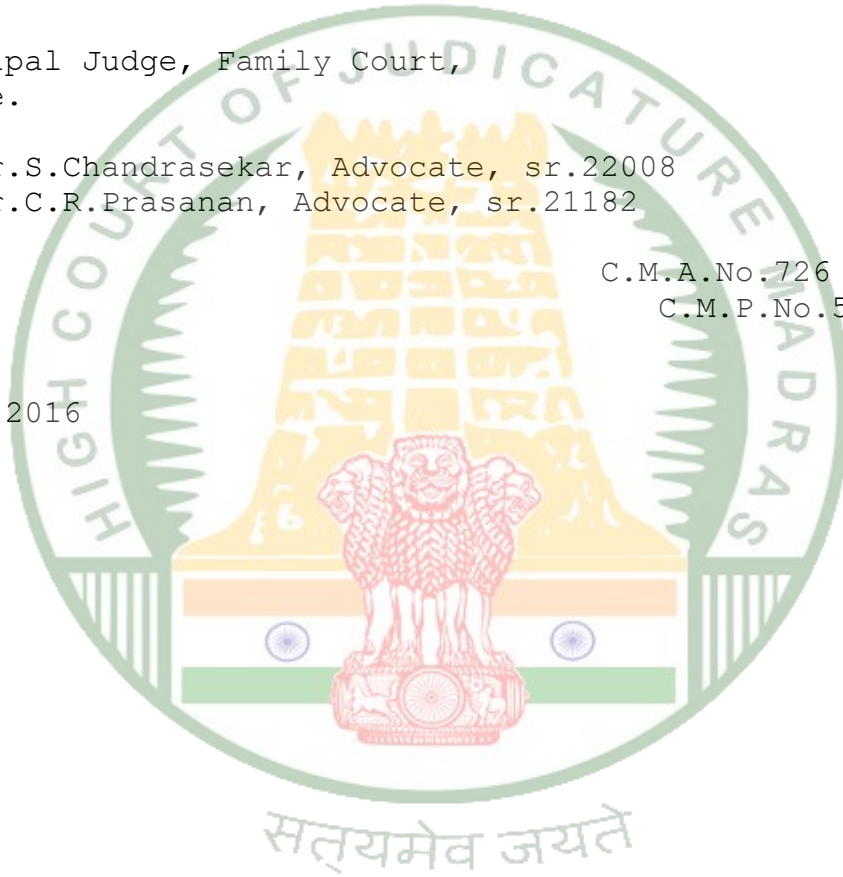
The Principal Judge, Family Court,
Coimbatore.

1 cc to Mr.S.Chandrasekar, Advocate, sr.22008

1 cc to Mr.C.R.Prasanan, Advocate, sr.21182

C.M.A.No.726 of 2016 and
C.M.P.No.5894 of 2016

svi co
kra 10.05.2016



WEB COPY