

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY**

**AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

FAMILY COURT APPEAL No.53 of 2016

**-
11.03.2016**

Between:

Bhavana Madhu
..Appellant

And

Bhavana Jayashree and another
..Respondents

Counsel for the appellant: Mrs.P.Padmavathi for Mr.P.Hema Chandra

Counsel for the respondents: Mr.Ch.Venkata Ramana

The Court made the following:

-
-
-
-
-
-
-
-

-
-
-

JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal arises out of the judgment and decree, dated 20.01.2016, in F.C.O.P.No.14 of 2011 on the file of the learned Judge, Family Court-cum-V Additional District Judge's Court, Tirupati.

2. The appellant is the husband of respondent No.1 and father of respondent No.2. Serious differences between the appellant and respondent No.1 appeared to have cropped up, leading to their desertion from each other. Respondent No.1 is living separately with respondent No.2 – her minor daughter, who was aged six years when F.C.O.P. was filed by her before the Family Court under Sections 18 and 22 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act') read with Section 7 of the Family Courts Act, 1984, claiming maintenance at Rs.40,000/- per month to herself and Rs.20,000/- per month to respondent No.2, and a charge over the petition schedule immovable properties. The respondents have also claimed past maintenance at Rs.3,00,000/-. Before the Family Court, on behalf of respondent No.1, she examined herself as P.W.1 and also examined P.Ws.2 and 3. She marked Exs.A-1 to A-9 on her side. On behalf of the appellant, he examined himself as R.W.1 and also examined R.Ws.2 and 3. He marked Ex.B-1 to B-8 on his side. Ex.X-1 authorization letter, marked through P.W.3, was also marked.

3. Having regard to the rival pleas of the parties, the Family Court framed issue No.1 which is substantive in nature, viz., whether the respondents are entitled to claim maintenance, if so, to what amount.

On appreciation of the oral and documentary evidence, the Family Court partly decreed the F.C.O.P., by the judgment under appeal, granting maintenance to respondent No.2 at Rs.10,000/- per month from the date of the F.C.O.P. and also a sum of Rs.50,000/- per annum

from the date of the said judgment to meet her expenses towards clothing, education and further, to pay medical expenses, if any, in future from March, 2016. The appellant was granted three months time from the date of the said judgment to pay the arrears of maintenance. Feeling aggrieved by the said judgment, this appeal is filed by the respondent in the F.C.O.P.

4. We have heard the learned counsel for both the parties and perused the record.

5. Though maintenance for respondent Nos.1 and 2 was claimed before the Family Court, the claim of respondent No.1 for her maintenance was turned down by it and in our view rightly, because the evidence on record shows that she is an Ayurvedic Doctor and has been earning some income.

6. The learned counsel for the appellant, however, submitted that as respondent No.1 has been living separately without reasonable cause and the appellant has not been earning much income in view of the mental disturbance caused on account of the family disputes, the Family Court is not justified in awarding maintenance in favour of respondent No.2 and that too from the date of the F.C.O.P.

7. Under Section 20 of the Act, a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

Section 23(2) of the Act fixed indicia for determining the amount of maintenance to be awarded to a wife and children, which reads as under:

“(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.”

8. During the oral and documentary evidence, it has come on record with respect to which there is no dispute that the appellant is a Post Graduate in Radiology and as per the income tax returns placed before the Family Court, his monthly salary during 2009-10 was Rs.1,19,000/-. Even if we consider the submission of the learned counsel for the appellant that due to the family disputes, his income has come down, in our opinion, being a qualified Radiologist, it is reasonable to presume that the appellant would not be earning less than Rs.1,00,000/- per month. Being the father of respondent No.2, it is his bounden duty to maintain her, by providing reasonable amenities and comforts in life, such as education, clothing, health care etc. The standard of living in the present day society being very high, a sum of Rs.10,000/- per month awarded by the Family Court cannot be said to be on a high side and on the contrary, it is too moderate in considering the socio and economic status of the appellant.

9. As regards the submission of the learned counsel for the appellant that the Family Court should have confined the amount of arrears of maintenance from the date of disposal of the F.C.O.P. instead of from the date of filing of the F.C.O.P., we do not find any merit therein. In our opinion, the Family Court has not committed any illegality in awarding maintenance from the date of filing of the F.C.O.P., as a party to a litigation is entitled to the relief as on the date of his or her instituting the litigation and in the absence of any legal bar on the Courts granting such relief, we are not inclined to interfere with the discretion exercised by the Family Court in awarding the arrears of maintenance from the date of filing of the F.C.O.P. After all respondent

No.2, who might be of 12 years of age as of now, is the daughter of the appellant and the arrears of past maintenance would go a long way in meeting her reasonable needs, such as decent education, marriage etc. Viewed from the above perspective, we do not find any reason whatsoever to interfere with the judgment of the Family Court.

10. Since the learned counsel for the appellant requested for a reasonable time for deposit of the arrears of maintenance awarded by the Family Court, the appellant is granted two months time from today for deposit of the arrears of maintenance.

11. Subject to the above direction, the Family Court Appeal is dismissed.

12. As a sequel to dismissal of the appeal, F.C.A.M.P.No.109 of 2016 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

11th March, 2016
GHN