

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.09.2017

Pronounced on : 22-09-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 1213 of 2016

1. Mrs. Savithri Selvakumar
2. Ms. Sahana Selvakumar
3. Mr. Siddharth Selvakumar ... Appellants/Petitioners/
Respondents

Versus

Dr. S. Selvakumar ... Respondent/Respondent/
Petitioner

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Fair and Decreetal Order dated 09.03.2016 passed in I.A. No. 1960 of 2015 in O.P. No. 2357 of 2015 on the file of Principal Judge, Family Court, Chennai.

For Appellants : Mr. V. Lakshminarayan
For Respondent : Mr. A. Ganesh

JUDGMENT

R. SUBBIAH, J

Not satisfied with the quantum of maintenance awarded by the learned Principal Judge, Family Court in the order dated 09.03.2016 passed in I.A. No. 1960 of 2015 in O.P. No. 2357 of 2015, the appellants, who are the wife, daughter and son of the respondent, have come forward with this appeal seeking enhancement of the pendente lite maintenance.

2. The marriage between the respondent and the first appellant was solemnised on 26.01.1992 at A.V.Rm Velayudha Mudhaliar Auditorium, Agasthiyar East Street, Ambasamudram, Tirunelveli District. The marriage was an arranged marriage having been solemnised in the presence of elders of both sides

as per Hindu rites and customs. Due to the wedlock, the appellants 2 and 3 were born. On account of serious matrimonial dispute between the respondent and the first appellant, the respondent has filed O.P. No. 2357 of 2015 for dissolution of the marriage solemnised between him and the first appellant on 26.01.1992 on the ground of cruelty.

3. Pending O.P. No. 2357 of 2015, the appellants herein have filed I.A. No. 1960 of 2015 in O.P. No. 2357 of 2015 on the file of Principal Judge, Family Court, Chennai under Section 24 of The Hindu Marriage Act, seeking interim maintenance. In the affidavit filed in support of I.A. No. 1960 of 2015, it was stated by the wife/first appellant that the appellants have already filed a suit against the respondent in O.S. No. 181 of 2015 on the file of Principal Family Judge, Family Court, Chennai seeking for a direction to the respondent to pay a sum of Rs.30,00,000/- per annum to the appellants 1 and 2 towards past maintenance and Rs.2,50,000/- per month towards future maintenance and also a sum of Rs.40,00,000/- to the third appellant towards future maintenance for his educational and living expenses. The said suit filed by the appellants is pending. According to the first appellant, at the time of her marriage with the respondent, her parents have given her 200 sovereigns of gold jewels, 20 kilogram of silver, spent Rs.10 lakhs towards marriage expenses apart from other 'sridhana' and house hold articles. It was further stated that due to the wedlock the appellants 2 and 3 were born. It was further stated that initially the respondent was in good terms with her, but by efflux of time, he kept away from the matrimonial company of the first appellant. It was further stated that the respondent did not show much care or concern towards the appellants. Few years prior to the filing of the Original Petition, the respondent started neglecting the appellants and they were never allowed to take any decisions in the family. The respondent also did not extend moral or financial support to the appellants and he failed to discharge his duty as a husband towards the first appellant. It was further stated that the respondent is a Doctor by profession and running a hospital in the name of Selvarangam Hospital at C-24, First Main Road, Anna Nagar, Chennai - 600 102 and earning nearly Rs.2 crores per annum. It was also contended by the appellants that the respondent transferred Rs.11,20,000/- from the account of second appellant, Rs.13,50,000/- and Rs.30,25,000/- from the account of the first appellant and Rs.14,20,000/- from Siddarth Welfare Trust Account on 06.09.2010 to Selvarangam Hospital account. Thus, a total sum of Rs.69,15,000/- was withdrawn by the respondent and transferred it to the account of the hospital run by him. In the affidavit filed in support of I.A. No. 1960 of 2015 the appellants have furnished details with regard to the quantum of income tax paid by the respondent for various financial years

and the various properties owned by him. The appellants have also furnished the details of the luxury vehicles owned by the respondent in his name. According to the appellants, though the appellants and the respondent were living in the same roof, the respondent is paying only Rs.30,000/- per month which is grossly insufficient for the appellants to maintain themselves. It was further stated that the appellants are only supported by the father of the first appellant to meet their financial needs and they were left in the lurch by the respondent. On and from 26.01.2015, the respondent left the shared household and started living separately at No.F-120, Anna Nagar, Chennai. In the affidavit filed in support of the I.A. No. 1960 of 2015, the appellants have also tabulated the details of the expenses to be incurred by them, inclusive of the educational expenses of the appellants 2 and 3.

4. It was claimed by the appellants that the respondent is getting a sum of Rs.42,00,000/- per annum from the hospital run by him, besides Rs.21,00,000/- per annum as Dividends. That apart, the respondent is also receiving a sum of Rs.10,00,000/- per annum from Sahana Pharmacy and Rs.6,00,000/- per annum from Siddarth Imaging. Above all, the respondent is getting interest from fixed deposit from the bank to the tune of Rs.5,00,000/-. Further, the respondent is also in receipt of Rs.12,00,000/- per annum as salary from the hospital and Rs.64,00,000/- per annum towards profit from the hospital. However, the respondent is not paying any amount to the appellants to maintain themselves. The appellants require a minimum of Rs.2,50,000/- per month towards the reasonable expenses to be incurred by them, which is inclusive of medical expenses, educational expenses for the appellants 2 and 3 and other household expenses. In such circumstances, the appellants have filed the application under Section 24 of The Hindu Marriage Act to direct the respondent to pay a sum of Rs.2,50,000/- per annum towards interim maintenance to the appellants pending disposal of the Original Petition and a sum of Rs.1,00,000/- towards litigation expenses.

5. The application for interim maintenance filed by the appellants was resisted by the respondent by filing a detailed counter affidavit. According to the respondent, the family of the first appellant did not offer 200 sovereign of gold jewellery, 20 kilogram of silver, besides spending Rs.10 lakhs for the marriage, as alleged by the appellants. The respondent also denied the allegation that he earns Rs.2 crores per annum. As regards the withdrawal of the amount from the account maintained by the appellants, it was stated that the amount was deposited by the respondent over a period of time and it was borrowed for the purpose of maintaining the hospital expenses. Further, the respondent is paying interest for the amount withdrawn from the bank account of the appellants and they are

in receipt of interest. The respondent, while denying the averment that he had neglected the appellants, has given a detailed account of the immovable properties brought in the name of the appellants 2 and 3 and other expenses incurred by him. As regards the ownership of the luxurious cars, it was stated by the respondent that the cars stand in the name of the hospital and it was provided to him by the hospital for his official use. Above all, it was stated that the appellants are presently residing in the house belonged to the respondent at No.51, E Block, Anna Nagar, Chennai and it was his self acquired property. In fact, the appellants have driven him out from the said property and he is now residing in the property at No.37, C Block, Anna Nagar, Chennai along with his mother. It was further stated that for the house which is under the occupation of the appellants, even the electricity consumption charges, taxes and charges payable to the Corporation and other authorities are being paid by the respondent. Therefore, there is no expenses to be incurred by the appellants towards rent for the house which is in their occupation.

6. According to the respondent, due to the ill advise given by the first appellant, her brother and her father, the appellants 2 and 3 are looking at the respondent with animosity and they are not even prepared to talk to him. In spite of the same, the respondent paid a sum of Rs.40,000/- per month towards their day to day maintenance. In fact, due to the harassment and ill-treatment caused by the appellants, the respondent could not concentrate in his profession, as before, which had dented his professional income and consequently he could not even pay Rs.40,000/- to the appellants which he was paying earlier and reduced it to Rs.30,000/- per month. It was also stated that the respondent has met the educational expenses for the second and third appellants. As far as the educational expenses of the third appellant, according to the respondent, he can very well pursue a course in Biotechnology within India without having to spend Rs.2.25 Crores for an identical course at abroad. Thus, he is not in a position to pay for the educational expenses of the third appellant in abroad besides that the third appellant has attained majority, advancing in his age and he is capable of earning himself. As far as the monthly expenditure of Rs.2,50,000/- sought for by the appellants, it was stated that the respondent cannot afford to pay for extravagant and unnecessary expenses of the appellants and it is unfair on their part to demand such a huge amount towards interim maintenance. Even without any demand, the respondent was paying a sum of Rs.30,000/- per month besides accommodated them in his own house and meeting the electricity consumption charges and other reasonable expenses for their comfortable stay in his own house. Above all, it was stated that recently, the respondent has purchased two properties one in Padur Vill0age, Chengalpat

Taluk, whose present market value is Rs.2,50,00,000/- and another property in Yegaloor Village, Chengalpet Taluk, whose present market value is Rs.3,00,00,000/-. If the appellants 2 and 3 want to independently reside in the above said properties purchased in their name, they can very well stay there or they can let it for rent and utilise the rental income for their maintenance. Thus, according to the respondent, he never neglected and failed to take care of the interest of the appellants in any manner. Above all, it was submitted that the appellants 2 and 3 were not parties to the Original Petition filed by him seeking divorce, while so, they are not entitled to file the present application for maintenance along with the first appellant/wife. Even assuming that they are entitled for maintenance, both the appellants 2 and 3 have attained majority and they are capable of earning for themselves. Therefore, the respondent sought for dismissal of the application for interim maintenance filed by the appellants.

7. Before the Family Court, no witness was examined or documents marked by either side in I.A. No. 1960 of 2015. Therefore, the Family Court, upon considering the affidavit and counter statement of the appellants and the respondent, observed that the respondent is already paying a sum of Rs.30,000/- per month to the appellants towards their maintenance. The Family Court further observed that the respondent has purchased immovable properties in the name of the appellants 2 and 3 in which they can either stay or let them out for rent and retain the rental income for their maintenance. The Family Court also observed that as the third appellant has become major and the first appellant has made an endorsement restricting her claim only in so far as the appellants 1 and 2 alone, the Family Court, having regard to the entire materials placed on record, directed the respondent to pay a sum of Rs.20,000/- per month to the first appellant and Rs.12,000/- per month to the second appellant, totalling a sum of Rs.32,000/- per month. The Family Court also further directed the respondent to pay a sum of Rs.20,000/- per month towards one time litigation expenses. It is as against this order dated 09.03.2016 passed by the Family Court, Chennai, the appellants have come forward with this appeal.

8. The learned counsel appearing for the appellants would contend that the respondent is a Doctor by profession and he is running a hospital in the name and style of Selvarangam Hospital at Anna Nagar, Chennai. However, the Family Court, Chennai failed to take note of the resourcefulness and wherewithal of the respondent to pay maintenance amount to the appellants. It is further contended that the respondent did not dispute the fact as regards his earning capacity, the income tax amount paid by him as also the various movable and immovable properties

owned by him. The respondent himself admitted that he is performing not less than 6 to 8 surgeries a day and earning atleast Rs.3,00,000/- per day for performing such surgeries. When such a clear admission was made by the respondent himself, the refusal on the part of the Family Court to award sufficient amount towards interim maintenance is wholly arbitrary, unjustified and uncalled for. It is further contended by the learned counsel for the appellants that before the Family Court, the appellants have filed I.A. No. 1958 of 2015 and I.A. No. 1959 of 2015 for production of the bank accounts, income tax returns and other records to prove the earning capacity of the respondent, however, the Family Court, without passing any orders on those applications, passed the impugned order directing the respondent to pay a meager amount of Rs.32,000/- per month to the appellants 1 and 2 towards interim maintenance. According to the learned counsel for the appellants, the Family Court failed to see the kind of lifestyle and status enjoyed by the appellants during their stay with the respondent. During the relevant period of stay with the respondent, the appellants had the benefit of a cook, three helpers cum maids, driver and day and night security guard at their command. Further, the house where they stayed was equipped with various electronic gadgets and enjoyed a sophisticated lifestyle which they are entitled to have even after the withdrawal of the matrimonial company by the respondent. Further, the Skoda make Laura Model Car provided to the respondent by the hospital was taken possession by the respondent after initiating divorce proceedings against the first appellant and the appellants are confined only with a mere Rs.32,000/- per month awarded towards the interim maintenance of the appellants 1 and 2 alone.

9. The learned counsel for the appellants placed reliance on the Division Bench decision of the Delhi High Court in the case of (Vikas Abluwalia vs. Simran Abluwalia) reported in 206 (2014) DLT 709 wherein it was held that while considering an application for interim maintenance, the Court has to look into the status of the parties, their earning capacity and their capacity to pay maintenance. Further, while granting maintenance, the spouse claiming maintenance should as far as possible be kept in the same status which he or she enjoyed while being in the matrimonial life with the other spouse.

10. The learned counsel for the appellants relied on the decision of the Honourable Supreme Court in the case of (Vinny Parmvir Parmar vs. Parmvir Parmar) reported in (2011) 7 Scale 741 to contend that the quantum of maintenance awarded must inter alia depends on the status of the husband. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, the claim of the parties to incur reasonable expenses for his own maintenance and others

whom he is obliged to maintain under the law and statute. The Court also has to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to when she lived with her husband. For the very same proposition, the learned counsel for the appellants also placed reliance on the decision of the Honourable Supreme Court in (i) (Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and another) reported in (1970) (3) Supreme Court Cases 129 (ii) (Chaturbhuja vs. Sita Bai) reported in AIR 2008 Supreme Court 530 and (iii) (Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy) reported in (2017) (3) CTC 209. By placing reliance on the above decisions, the learned counsel for the appellants would contend that the assets of the respondent were not taken into consideration by the Family Court while ordering a sum of Rs.32,000/- as pendent lite maintenance to the appellants 1 and 2 thereby made the appellants to remain under the mercy of the respondent for each and everything.

11. Per contra, the learned counsel for the respondent would contend that the respondent never neglected or refused to provide maintenance to the appellants befitting to his financial status and he looked after all their needs. The appellants are now residing in the self-acquired property of the respondent and the respondent is living with his parents. The appellants need not pay rent, electricity consumption charges, water amenity charges and other taxes which are being paid by the respondent. Apart from that, even before the Family Court could award pendent lite maintenance of Rs.32,000/- per month, the respondent was paying Rs.30,000/- to the appellants for their day to day maintenance. As far as the income derived by performing surgeries, the learned counsel for the respondent would contend that the respondent is aged 55 years and he is performing, on an average, only two or three surgeries per day. Further, due to the matrimonial cruelty and mental agony inflicted on him, the respondent could not discharge his professional duties as before and there is a slump in his income which is largely attributable due to the appellants. As regards the lifestyle amenities enjoyed by the appellants when they were staying with the respondent, the learned counsel for the respondent would contend that it is a falsehood to state that the appellants had the benefit of a cook, three helpers cum maid, driver and a full time security guard. The appellants did not produce any evidence to substantiate this averment. In fact, when the first appellant was employed in the hospital run by the respondent, she was provided with a Skoda Laura Car which stands in the name of the hospital, however, after she discontinued her employment with the hospital, she retained the car for herself and ultimately, after badly damaging the vehicle, it was left to the hospital. In any event, the Family

Court, after perusing the income tax returns and also the counter statement filed by the respondent, has arrived at a just and reasonable conclusion to award a sum of Rs.32,000/- per month to the appellants which does not call for any interference by this Court.

12. The learned counsel for respondent placed reliance on the decision of the Division Bench of the Bombay High Court in the case of (Sunil Hansraj Gupta vs. Payal Sunil Gupta) reported in AIR 1991 Bombay 423 wherein it was held that the object of providing pendente lite maintenance is to enable the indigent weaker spouse to resist such action and prevent vagancy and afford maintenance.

13. We have given our anxious consideration to the rival submissions made. Even though very many contentions have been urged on behalf of both sides, with reference to the matrimonial dispute between the spouses, they are the subject matter of the Original Petition filed by the respondent for divorce on the grounds of cruelty and we are not dealing with the same in this appeal. We are only inclined to deal with the correctness or otherwise of the order passed by the Family Court in an application filed under Section 24 of The Hindu Marriage Act, by the appellants herein. For the said purpose, before venturing to consider the rival submissions, we deem it appropriate to refer to Section 24 of the Hindu Marriage Act, which reads as follows:-

"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 to 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."

14. The object of Section 24 of the Hindu Marriage Act is not to elevate the status or standard of the husband or wife as the case may be to be on par with each other. The purpose of awarding pendente lite maintenance is to ensure that adequate financial support is provided for the husband or wife when there is no independent income to maintain himself or herself as the case may be during the pendency of matrimonial proceedings. The financial status of the husband or wife can be taken note of by the Court only for fixation of quantum of maintenance and it is

not a criteria for matching the financial status of the wife or husband as the case may be.

15. The decisions relied on by the learned counsel for the appellants in (i) (Dr. Kulbhushan Kumar vs. Smt. Raj Kumari and another) reported in (1970) (3) Supreme Court Cases 129 (ii) (Chaturbhuj vs. Sita Bai) reported in AIR 2008 Supreme Court 530 and (iii) (Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy) reported in (2017) (3) CTC 209 mentioned supra cannot be made applicable to the present case, as, in those cases, the Honourable Supreme Court had dealt with the legal position with reference to Section 25 of The Hindu Marriage Act. In the present case, we are dealing with the scope and extent to which pendente lite maintenance can be awarded under Section 24 of The Hindu Marriage Act.

16. It is evident from Section 24 of The Hindu Marriage Act that for determining the claim of maintenance, the Court is required to examine the need of the parties to the litigation, especially to provide a reasonable need based financial support pending the litigation. The amount awarded by the Court under Section 24 of The Hindu Marriage Act towards pendente lite maintenance cannot be equated to one of permanent alimony as provided under Section 25 of The Hindu Marriage Act and it is an interim arrangement to ensure that adequate financial support is provided for the husband or wife when there is no independent income to maintain himself or herself as the case may be during the pendency of matrimonial proceedings. As observed earlier, the financial status of the husband or wife can be taken note of by the Court only for fixation of quantum of maintenance and it is not a criteria for matching the financial status of the wife or husband as the case may be. Thus, the provision contemplated under Section 24 of The Hindu Marriage Act should not be permitted to be used as a potent tool to seek for pendente lite maintenance which are beyond basic necessities or to lead a kind of lifestyle which was hitherto provided when both the spouses are leading the matrimonial life under one roof. In the present case, what the appellants plead is that the amount provided by the respondent hitherto at Rs.30,000/- per month is meager and therefore, if the interim maintenance amount is awarded at Rs.2,50,000/- per month, their financial resourcefulness would match the status of the respondent. Thus, the appellants have sought for maintenance only to elevate their status with that of the financial status of the respondent, which is legally impermissible. Admittedly, in the present case, the appellants are residing in a rent-free fully furnished house provided by the respondent. That apart, even before the Family Court awarded the pendente lite maintenance at Rs.32,000/- per month, from the day one of separation, admittedly, the respondent was paying a sum of Rs.30,000/- per month. Having regard to the

above factual matrix of the case, we feel that the Family Court is fully justified in awarding a sum of Rs.32,000/- towards pendente lite maintenance to the appellants 1 and 2. At the same time, having regard to the facts and circumstance of the case, we are only inclined to enhance the pendente lite maintenance awarded by the Family Court to the appellants 1 and 2 from Rs.32,000/- to Rs.40,000/- per month, which, in our opinion, would meet the ends of justice.

17. In the light of the above reasonings, we modify the Order dated 09.03.2016 passed in I.A. No. 1960 of 2015 in O.P. No. 2357 of 2015 on the file of Principal Judge, Family Court, Chennai, enhancing the pendente lite maintenance awarded by the Family Court to the appellants 1 and 2. Consequently, the Civil Miscellaneous Appeal is partly allowed. No costs. Having regard to the fact that the Original Petition filed by the respondent for grant of a decree of divorce is ripe for trial in which the respondent examined himself as PW1 and Exs. P1 to P23 were marked and the Original Petition is now posted for cross-examination by the appellants, we deem it appropriate to direct the Principal Judge, Family Court, Chennai to take up O.P. No. 2357 of 2015 for hearing on a day to day basis and dispose it of on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rsh

To

The Principal Family Judge
Family Court
Chennai

+2cc to M/S.V.Raghavachari, Advocate Sr. 69637
+1cc to Mr.A.Ganesh, Advocate Sr. 69644

Pre-delivery Judgment in
CMA No. 1213 of 2016

KJ (CO)
VR(06/10/2017)