

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1409 of 2017

K.Gurusamy

... Appellant

Versus

G. Malliga

... Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Order dated 23.02.2016 made in I.A. No. 1061 of 2016 in FCOP No. 258 of 2016 on the file of Family Court, Erode

For Appellant : Mr.P.Srinivas

For Respondent : Mr.N.Manokaran

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY R. SUBBIAH, J)

This appeal is filed by the appellant/husband, questioning the correctness of the order dated 23.02.2016 passed by the Family Court, Erode in I.A. No. 1061 of 2016 in FCOP No. 258 of 2016, which was filed by the wife/respondent herein.

2. The appellant herein has filed FCOP No. 258 of 2016 before the Family Court, Erode praying to grant a decree of divorce dissolving the marriage solemnised between him and the respondent on 11.06.1986. Pending the Original Petition, the wife/respondent has filed I.A. No. 1061 of 2016 in FCOP No. 258 of 2016 under Section 24 of The Hindu Marriage Act praying to direct the appellant to pay a sum of Rs.10,000/- towards interim maintenance and another sum of Rs.10,000/- towards litigation expenses. The application filed by the wife/respondent was contested by the husband/appellant. The Family Court, after hearing both sides and taking into consideration the evidence available on record, allowed the application filed by the wife/respondent herein and directed the husband/appellant to pay a sum of Rs.6,000/- towards monthly maintenance and Rs.5,000/- towards litigation expenses. Aggrieved by the said order, the husband/ appellant is before this Court with this appeal.

3. The learned counsel appearing for the appellant would vehemently contend that earlier, the respondent herein has filed M.C. No. 42 of 2005 under Section 125 of the Code of Criminal Procedure before the Chief Judicial Magistrate, Erode. In the said proceedings, while adducing evidence, the respondent has categorically admitted that she has converted herself from Hinduism to Christianity six years back. The respondent has further stated that she is not willing to live with the appellant herein. Taking note of such evidence, the learned Chief Judicial Magistrate, Erode dismissed M.C. No. 42 of 2005 filed by the respondent herein on 25.07.2008. While so, the present petition filed by the respondent under Section 24 of The Hindu Marriage Act is not maintainable. The Family Court, Erode, without taking into account the evidence recorded in M.C. No. 42 of 2005 has erroneously directed the appellant herein to pay a sum of Rs.6,000/- per month as interim maintenance and Rs.5,000/- towards litigation expenses to the respondent. In this regard, the learned counsel for the appellant invited the attention of this Court to Section 18 (2) of The Hindu Adoptions and Maintenance Act, 1956, wherein it is stated that a Hindu Wife is entitled to live separately from her husband without forfeiting her claim to maintenance and as per Section 18 (2) (f) of the said Act, she is entitled to be maintained by her husband during her life time, if he (husband) is ceased to be a Hindu by conversion to another religion. In this case, the wife/ respondent herein has converted herself from Hinduism to Christianity and living separately therefore, she is not entitled for maintenance. According to the learned counsel for the appellant, the Family Court, Erode, without considering the above legal position, has erroneously awarded interim maintenance to the respondent and therefore, he prayed for setting aside the order passed by the court below.

4. On the other hand, the learned counsel appearing for the wife/respondent herein, by placing reliance on the decision of the Honourable Apex Court in the case of (Manish Jain vs. Akanksha Jain) reported in AIR 2017 Supreme Court 1640 would contend that Section 24 of The Hindu Marriage Act does not use the word 'maintenance' rather, the word 'support' alone is used therein and a harmonial interpretation to the provisions contained in Section 24 of the Hindu Marriage Act would unfold the intention of the legislature to provide financial support to the husband or wife as the case may be during the pendency of the matrimonial proceedings. The conversion of the husband or wife as the case may be to any other religion cannot be decided by the Court in an application filed under Section 24 of The Hindu Marriage Act. The Family Court, Erode, by taking into consideration the financial difficulties expressed by the wife/respondent herein to meet her day to day expenses, has rightly directed the appellant to pay a sum of Rs.6,000/- per month as monthly maintenance to the wife/respondent apart from Rs.5,000/- towards litigation expenses and it does not warrant any interference by this Court.

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5. We have heard the learned counsel for both sides and perused the materials placed on record. In an application

filed either by the husband or wife under Section 24 of The Hindu Marriage Act, the financial status of the parties and his or her capability to maintain himself or herself as the case may be during the pendency of the matrimonial proceedings alone is required to be considered. At this stage, what is required to be decided is the resourcefulness or otherwise of the applicant to maintain himself or herself during the pendency of the matrimonial proceedings. For this purpose, the Courts are not required to take note of the conversion of either the husband or wife to any other religion as contemplated under Section 18 (2) (f) of The Hindu Adoptions and Maintenance Act, 1956 or it will be a ground to deny interim maintenance sought for in an application under Section 24 of The Hindu Marriage Act. In other words, Section 18 (2) (f) The Hindu Adoptions and Maintenance Act, 1956 has no application for considering the claim of the husband or wife as the case may be for interim maintenance under Section 24 of The Hindu Marriage Act. It is needless to mention that the provisions contemplated under Section 18 (2) (f) of The Hindu Adoptions and Maintenance Act, 1956 can be gone into by the Courts only at the time of deciding the Original Petition filed by the appellant herein for dissolving the marriage solemnised between him and the respondent and the same will not have any bearing for the Court to consider an application filed by the respondent under Section 24 of The Hindu Marriage Act seeking pendente lite maintenance. As rightly pointed out by the learned counsel for the respondent, by placing reliance on the decision of the Honourable Apex Court in Manish Jain case mentioned supra, under Section 24 of The Hindu Marriage Act, the word 'maintenance' is not indicated but only the word 'support' is mentioned, meaning thereby, the Courts are required to consider whether the applicant, who has come forward with an application under Section 24 of The Hindu Marriage Act, is in a position to support himself or herself during the pendency of the matrimonial proceedings. The relevant portion of the order passed by the Honourable Supreme Court reads as under:-

"14. Section 24 of the Hindu Marriage Act empowers the Court in any proceeding under the Act. If 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is Maintenance pendente lite and expenses of proceedings. The Section, however, does not use the word maintenance, but the word support can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

25. An order for maintenance pendente lite or for costs of the proceedings is conditional on the

circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wifes parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation, the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."

6. Thus, it could be evident from the above decision of the Honourable Supreme Court that in an application filed under Section 24 of The Hindu Marriage Act, what is relevant for consideration is the status of the parties, their respective needs, capacity of the husband or wife as the case may be to pay, having regard to his or her reasonable expenses for his or her own maintenance and those he or she is obliged under Law and statutory but involuntary payments or deductions. In such view of the matter, we are of the view that the Family Court, Erode is right in directing the appellant to pay interim maintenance and litigation expenses to the respondent and we do not find any infirmity in the said order. As regards the quantum of the amount awarded, we find that only a sum of Rs.6,000/- per month was awarded towards monthly maintenance apart from awarding a sum of Rs.5,000/- towards litigation expenses, which, in our opinion, cannot be said to be excessive.

7. In the result, we confirm the Order dated 23.02.2016 made in I.A. No. 1061 of 2016 in FCOP No. 258 of 2016 on the file of Family Court, Erode. The Civil Miscellaneous Appeal is therefore dismissed. No costs. Having regard to the facts and circumstances of the case, we direct the Family Court, Erode to dispose of FCOP No. 258 of 2016 on it's file within a period of six months from the date of receipt of a copy of this Judgment. Consequently, CMP No. 7538 of 2017 is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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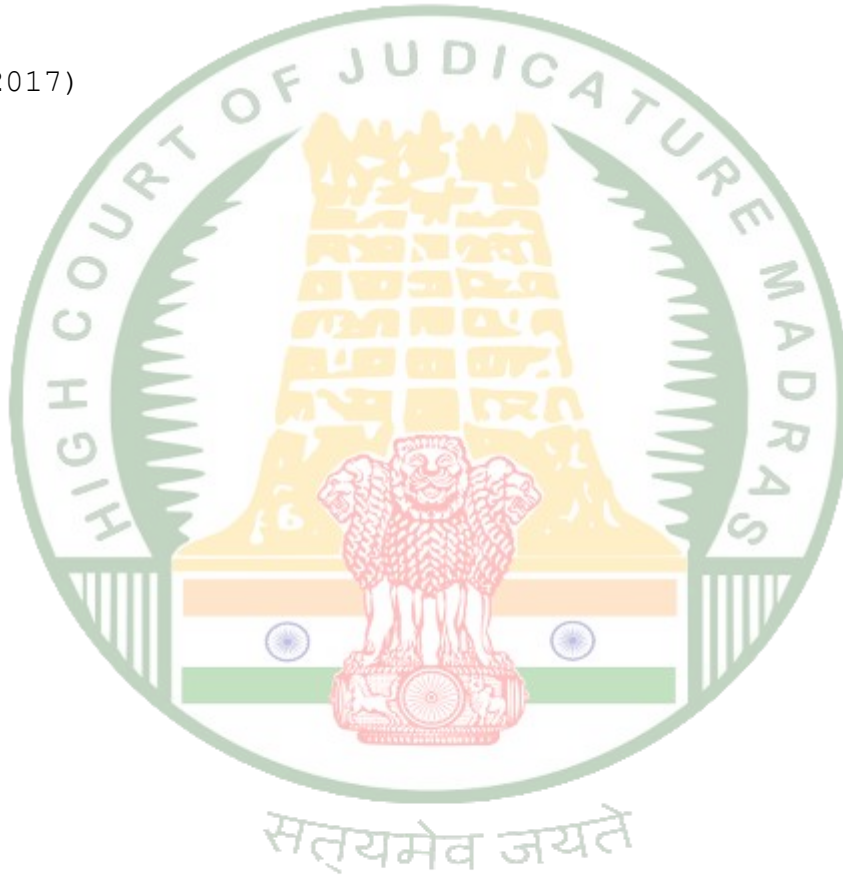
To

The Presiding Officer
Family Court,
Erode.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.47182
+1cc to Mr.P.Srinivas, Advocate, S.R.No.47371

C.M.A.No.1409 of 2017

CP(CO)
CA(01/08/2017)



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