

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 31.07.2017
Judgment Pronounced on: 17.08.2017

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No.1776 of 2017
and C.M.P.No.9543 of 2017

S.Sampathkumar ... Appellant/Respondent
Versus

P.Kavitha ... Respondent/Petitioner

Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act, 1984, against the Fair and Decretal order dated 01.11.2016 made in I.A.No.8 of 2016 in H.M.O.P.No.1187 of 2014 by the learned Additional Principal Family Judge, Additional Family Court, Coimbatore.

For Appellant ... Mr.S.Vijayakumar
For Respondent ... Mrs.C.Sri Ranjani

JUDGMENT

(Judgment of the Court was delivered
by A.D.JAGADISH CHANDIRA, J)

This Civil Miscellaneous Appeal has been filed by the husband against the order of the Additional Principal Family Judge, Additional Family Court, Coimbatore, directing the appellant herein to pay a sum of Rs.5,000/- per month to the respondent/wife, towards interim maintenance from the date of petition i.e. 11.12.2015 and further directing the appellant herein to pay the arrears of amount in two equal monthly instalments and to pay the interim maintenance amount for on or before 7th day of every succeeding English Calender Month.

2.Brief facts leading to filing of this Civil Miscellaneous Appeal are as follows:-

(i) The marriage between the Appellant and the Respondent was solemnized on 26.05.2010 at Arulmigu Periyannayagi Amman Thirukovil, Palangarai, Avanashi, Tirupur District, according to the Hindu religious rites and customs. After the marriage, the marriage reception was held on the same day at "Sri Baladhandayuthapani Thirukovil" Neelikonampalayam, Coimbatore. After the marriage the appellant and the respondent along with the mother of the appellant were jointly residing happily for the first three years without any interruption. There is no issue born to them out of wedlock. While so, some matrimonial dispute arose between them.

(ii) Hence, the respondent had filed a petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 in H.M.O.P.No.1187 of 2014 on the file of the Additional Family Court, Coimbatore on the allegation of cruelty by the appellant, his mother and his sister. The Respondent had filed a Maintenance Petition in M.C.No.141 of 2014 on the file of the Additional Family Court, Coimbatore, claiming maintenance of Rs.10,000/- per month alleging that the appellant is working as non-teaching staff in PSG College of Technology, Peelamedu, Coimbatore and at present the appellant is earning more than a sum of Rs.40,000/- per month from the aforesaid sources. The appellant neglected and refused to maintain the respondent. The respondent filed the petition claiming a sum of Rs.10,000/- per month towards interim maintenance for her food, cloths and shelter and for her medical expenses.

(iii) The appellant had filed a petition in H.M.O.P.No.254 of 2015 on the file of the Additional Family Court, Coimbatore, under Section 9 of the Hindu Marriage Act, 1955 for Restitution of Conjugal Right. According to the appellant the marriage between him and the respondent was solemnized on 26.05.2010 in the presence of well-wishers, relatives, elders, friends of both the family. The respondent is a very adamant in nature and is liking to lead a luxurious way of life. The respondent is working as an Accountant in "Ambal tractor parts" at Dr.Nanjappa Road, near Indian Overseas Bank, Kattoor, Coimbatore and she is earning a sum of Rs.22,000/- per month and she used to stay in her parental home about 5 days for every week and she spent time in matrimonial home on the weekends only. The respondent was frequently indulging in quarrel with the appellant unnecessarily with an intention to have a separate family from the joint family. The respondent left the matrimonial home without any valid reason and without knowledge of the appellant on 10.05.2014. The efforts made by the appellant to bring her to matrimonial home on 11.05.2014, 15.06.2014 and 07.09.2014 with the help of his mother his elders and relatives ended in futile. The appellant also expressed his willingness in person, to

lead a peaceful life with the respondent due to prestige issue of his family in the society. But the respondent never conceded to the demand of reunion and that the steps for reunion taken through police also ended in futility. Hence, the appellant was constrained to file the petition sought for restitution of his conjugal rights.

(iv) During the pendency of the above Original Petitions, the respondent/wife has filed I.A.No.8 of 2016 in H.M.O.P.No.1187 of 2014, stating that her husband had neglected her and refused to maintain her and sought for direction to the appellant/husband to pay interim maintenance to the respondent/wife at the rate of Rs.10,000/- per month to meet the day to day needs such as food, clothes, shelter, medicine, proper nourishment etc., alleging that the appellant is working as a non-teaching staff in PSG College of Technology, Peelamedu, Coimbatore and is earning more than a sum of Rs.40,000/- per month and that he is capable of paying maintenance as demanded by the respondent/wife.

(v) The appellant resisted the claim of interim maintenance made by the respondent by filing a detailed counter stating that she is working as an Accountant in "Ambal tractor parts" at Coimbatore and she is earning a sum of Rs.22,000/- per month and as such, she is capable of maintaining herself and that she was acting on the ill advice of her relatives.

3. The learned Additional Family Court, Coimbatore, after hearing both sides, allowed the petition and directed the appellant/husband to pay a sum of Rs.5,000/- per month to the respondent/wife towards interim maintenance from the date of petition i.e from 11.12.2015 and further directed that the arrears amount is to be paid in two equal monthly instalments and the interim maintenance amount be payable on every month shall be paid on or before the 7th of every succeeding English Calendar month.

4. Challenging the above order, the present appeal has been filed by the husband.

5. Heard. Mr. S.Vijayakumar, learned counsel for the appellant as well as Ms.C.Sri Ranjani, learned counsel for the respondent.

6. The learned counsel for the appellant/husband submitted that the respondent/wife is working as an Accountant in "Ambal tractor parts" at Coimbatore and she is earning a sum of Rs.22,000/- per month and as such, she is capable of maintaining herself and that the appellant was getting a salary of Rs.11,036/- as per Ex.P4 and it was humanly impossible for him to pay Rs.5,000/- per month from 11.12.2015. Further, it was

also submitted that the appellant had availed two loans from Central Bank of India and was making monthly repayments and submitted that the order passed by the learned Additional Principal Family Judge, Coimbatore, is on the higher side and thereby sought for setting aside the order of the Family Court.

7. The learned Counsel for the respondent/wife submitted that the respondent/wife is unemployed and she is at the mercy of her age old parents and that the appellant has neglected and refused to maintain her whereas he had wantonly in order to defeat the claim of the wife had created loan liabilities.

8. We have carefully considered the submissions made by the respective counsels and perused the documents on record.

9. At the outset, the appeal has been filed against the order dated 01.11.2016 passed by the learned Judge, Principal Family Court, Coimbatore, in I.A.No.8 of 2016 in H.M.O.P.No.1187 of 2014 awarding interim maintenance at Rs.5,000/- per month under Section 24 of the Hindu Marriage Act.

10. The learned Principal Family Court Judge, took into consideration the submissions made by the counsel for the respondent/wife with regard to the employment status of the husband as a non-teaching staff in PSG College of Technology, Peelamedu, Coimbatore, arrived at a conclusion that his monthly income is more than a sum of Rs.30,000/- per month. Though the appellant had examined one Thiru.Palanisamy Partner of Ambal Tractor Parts and marked Exs.R1 to R7, the Family Court Judge refused to believe the contention of the appellant that the respondent/wife is working as an Accountant in "Ambal tractor parts" at Coimbatore and that she is earning a sum of Rs.22,000/- per month stating that except the xerox copy of the photograph filed by the appellant, no other material or plausible evidence has been produced to show that the respondent/ wife is working as an Accountant in "Ambal tractor parts" at Coimbatore and that she is earning a sum of Rs.22,000/- per month. Further, the learned counsel for the appellant submitted that the appellant has taken loans from the bank and he is paying the loans. On perusal of the records we are able to see that the appellant had taken two loans from Central Bank of India and even as per his records only when a person is capable of repaying the loan, banks generally grant loans depending upon the repaying capacity of the person and in this regard the Family Court has also given a finding to the effect that the petition seeking interim maintenance has been filed on 11.12.2015 and the loan under Ex.R.6 has been borrowed on 21.04.2016 which is subsequent to the filing of the petition and the memo dated 10.03.2016 filed by the appellant/respondent adopting the counter statement filed in the main O.P., as counter in the petition for interim maintenance. Hence, the

Family Court has rightly opined that the liability of loans cannot be construed to be liability on the date of filing of the petition and also held that it has been borrowed for the purpose of creating liability for the sake of avoiding payment of interim maintenance to the wife. Hence the learned Family Judge had fixed an amount of Rs.5,000/- per month towards interim maintenance of the respondent/wife. We agree with the said findings of the Family Court.

11. Section 24 of the Hindu Marriage Act, 1955 reads as follows:-

"24. Maintenance Pendente lite and expenses 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."

Though the Heading of the Section 24 of Hindu Marriage Act says the "Maintenance pendent lite and expenses of proceedings" the section however, does not use maintenance but the word "support". That too support for the period during the pendency of the proceedings and only till the disposal of the main O.P.

12. The Hon'ble Apex Court in Manish Jain v. Akanksha Jain [AIR 2017 SC 1640] has held as follows:-

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

Court.”

13. In the present case at the time of filing the petition claiming maintenance pendent lite, the respondent/wife had no sufficient income capable of supporting herself and the Family Court taking into consideration the evidence, has passed the order. The order passed by the Family Court under Section 24 of the Hindu Marriage Act, will survive only till the disposal of the main O.P. Hence the interim maintenance awarded by the Family Court is only to support the respondent/wife during the pendency of the proceedings.

14. In our view, in the present day cost of living a sum of Rs.5,000/- towards interim maintenance to the wife, cannot be considered to be exorbitant and the same would be just and reasonable to maintain the wife. Therefore, we find no infirmity in the said order.

15. In the result, we confirm the order dated 01.11.2016 passed by the Principal Family court, Coimbatore, in I.A.No.8 of 2016 in H.M.O.P.No.1187 of 2014. The appellant/husband is hereby directed to pay the arrears of interim maintenance if any payable by him to the respondent within a period of four weeks from today. Thereafter, the appellant shall continue to pay interim maintenance at the rate of Rs.5,000/- per month to the respondent, till the disposal of the main O.P.

16. Having regard to the facts and circumstances of the case, the Additional Family Court, Coimbatore, is directed to dispose of the main O.P.No.1187 of 2014 within a period of four months from the date of receipt of a copy of this judgment.

17. With the above observation, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gr.

To

The Additional Principal Family Judge,
Additional Family Court, Coimbatore.

copy to

The Section Officer
VR Section
HighCourt Madras

+1 cc to Mr.S.Vijayakumar Advocate sr 59749

+1 cc to Mrs.C.Sri Ranjani Advocate sr 59014

C.M.A.No.1776 of 2017

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