

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25-04-2017

PRONOUNCED ON : 01.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE M.S. RAMESH

Civil Miscellaneous Appeal No. 2733 of 2016
and
C.M.P. No. 19734 of 2016

P.R. Ganesh ... Appellant

Versus

K. Latika ... Respondent

Appeal filed under Section 19 (1) of the Family Courts Act, 1984 against the Fair and Decreeal Order dated 18.10.2016 passed in I.A. No. 922 of 2016 in O.P. No. 3651 of 2014 on the file of Principal Family Court at Chennai.

For Appellant : Mrs. Chitra Sampath, Senior Advocate
for Mr. T.S. Baskaran
For Respondent : Mr. P.B. Balaji

JUDGMENT

R. SUBBIAH, J

The present appeal has been filed as against the Fair and Decreeal order dated 18.10.2016 passed in I.A. No. 922 of 2016 in O.P. No. 3651 of 2014 whereby the Principal Family Court, Chennai has awarded a sum of Rs.10,000/- as monthly interim maintenance and Rs.5,000/- towards litigation expenses in the interim application filed by the respondent herein during the pendency of Original Petition filed by the appellant for dissolution of marriage on the grounds of cruelty and desertion.

2. It is the case of the respondent/wife that the appellant is a Doctor by profession and presently he is employed as Assistant Professor in Tamil Nadu Dental College and earning

more than Rs.1 lakh as monthly salary. The father of the appellant is a retired District Judge and his mother retired as Deputy Registrar from the services of the High Court, Madras and both are receiving pension. As far as the respondent/wife is concerned, it is stated that she is working as Head of the Department (HoD), Management Department in Dr. M.G.R. Janaki Arts College for Women, Adyar, Chennai and earning less than Rs.30,000/- as monthly salary. According to the respondent/wife, since the salary that she is earning is highly insufficient, she require maintenance from the appellant. Therefore, she has filed I.A. No. 922 of 2016 in OP No. 3651 of 2014 under Section 24 of The Hindu Marriage Act seeking to direct the appellant herein to pay a sum of Rs.40,000/- as monthly maintenance and Rs.25,000/- towards litigation expenses.

3. The case of the respondent/wife, as putforth in I.A. No. 922 of 2016, was resisted by the appellant by filing a detailed counter stating that the respondent is a holder of M.B.A. with M.Phil., and she is a Post Graduate Faculty employed as Head of the Department (HoD), Management Department in Dr. M.G.R. Janaki Arts College for Women, Chennai and she has suppressed her actual monthly salary. According to the appellant, at the time of marriage, he had presented 10 sovereigns of gold haaram, 2 sovereigns of black bead for Thali and they are in possession of the respondent/ wife. It is further stated in the counter that the respondent herself is in possession of 100 sovereigns of gold jewels presented at the time of the marriage and she had kept those jewels in her personal locker in Indian Bank, T. Nagar Branch. It is further stated that the respondent is having her own property which is worth few crores besides that she has got sufficient funds in the bank deposits and and she is also lending money and earning interest. Further, the father of the respondent retired as an Officer in Pay and Accounts Office and the terminal benefits of her father are retained by the respondent. Similarly, the mother of the respondent retired as a Teacher and the respondent is in possession of the service benefits paid to her mother. According to the appellant, the respondent suppressed all these particulars at the time of filing the application seeking interim maintenance. Thus, according to the appellant, the respondent is in possession of sufficient money and she is capable of maintaining herself. Therefore, he prayed for dismissal of the application for interim maintenance.

4. The learned Principal Family Judge, Chennai, has allowed the application filed by the respondent in part and directed the appellant to pay a sum of Rs.10,000/- per month as interim maintenance and Rs.5,000/- as litigation expenses on the reasoning that the income of the respondent is less than the half of the income of the appellant and therefore, considering

the status of the parties and their income, to keep the standard of the respondent to the level of the appellant, the respondent would need further amount towards her maintenance.

5. Assailing the reasons assigned by the Family Court, Chennai while granting maintenance to the respondent/wife, the learned Senior counsel appearing for the appellant would contend that admittedly, the respondent is working as Head of the Department in Dr. M.G.R. Janaki College for Women, Adyar, Chennai and she is earning a monthly salary of Rs.34,354/- (Rs.31,250 + Rs.3104/-) as per Ex.P1. In the counter filed by the appellant before the Family Court, he has clearly brought to the notice of the Court that the respondent/wife is having her own property, she has got sufficient funds in her name in the bank deposits, she is also lending amount to third parties and receiving interest besides that she is in possession of the terminal benefits received by her father and mother. However, the respondent has not denied these allegations made by the appellant in the counter before the Family Court by filing a reply statement. Therefore, according to the learned Senior Counsel for the appellant, it is clear that the respondent is resourceful enough to maintain herself and the Family Court ought to have dismissed her application seeking interim maintenance. But the Family Court awarded interim maintenance on the reasoning that the earning of the respondent is half of the amount earned by the appellant and therefore she is entitled for maintenance from the appellant. Such a reasoning assigned by the Family Court for awarding interim maintenance is legally not sustainable besides it is not in conformity with Section 24 of the Hindu Marriage Act. As far as the earning of the appellant, the learned Senior Counsel for the appellant brought to the notice of this Court Ex.R1, salary slip of the appellant to contend that after all statutory deduction, the appellant is only getting a sum of Rs.60,645/- as monthly salary and not more than Rs.1 lakh as alleged by the respondent/wife. The above aspects have not been considered by the court below while granting maintenance and therefore, the learned Senior counsel for the appellant prayed for allowing the Civil Miscellaneous Appeal.

6, In support of her contention, learned Senior counsel for the appellant invited the attention of this Court to the Order dated 30.03.2017 passed by the Honourable Supreme Court in Civil Appeal No. 4615 of 2017 (arising out of SLP (C) No. 7670 of 2014) in the case of (Manish Jain vs. Akansha Jain) wherein in Para No.14 and 15, it has been held as follows:-

"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 wife's 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."

7. On the other hand, the learned counsel for the respondent/wife would submit that it is incorrect to say that the respondent/wife is in receipt of Rs.34,354/- as monthly salary. By placing reliance on Ex.P1, salary slip of the respondent, it is submitted that the respondent is drawing only a sum of Rs.31,250/- per month as salary in which a sum of Rs.1,800/- towards Provident Fund as employee's contribution and Rs.1,095/- towards professional tax and Rs.209 towards Cooptex has been deducted from her salary. Thus, according to the counsel for the respondent/wife, the respondent is getting lesser amount as salary than that of the appellant. In this context, reliance was placed on the Judgment of the Honourable Supreme Court in the case of (Smt. Jasbir Kaur Schgal vs. The District Judge, Dehradun) reported in CDJ 1997 SC 280 to contend that while granting maintenance, the Courts have to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and those he is obliged under Law and statutory but involuntary payments or deductions. Further, amount of

maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. By placing reliance on the above decision of the Honourable Supreme Court, the learned Counsel for the respondent would contend that the Court below, taking note of the status of the appellant and respondent and the need of the respondent, has only awarded a reasonable amount as interim maintenance and it calls for no interference by this Court.

8. We have given our anxious consideration to the rival submissions made. Before venturing to consider the rival submissions made, 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."

9. 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 resourcefulness, wherewithal or financial capacity of wife or husband as the case may be and it cannot be awarded mechanically without examining the financial capacity of the husband or wife. In other words, if either the husband or the wife is financially capable of maintaining himself or herself with the availability of resources, either by way of employment or otherwise, which is proved to the satisfaction of the Court, then the Court has to restrain itself from awarding pendente lite maintenance amount.

10. In the present case, in the counter affidavit filed by the appellant before the Family Court, he has clearly pleaded that the respondent herein is employed as Head of the Department in Dr. M.G.R. Janaki Arts College for Women and is in receipt of monthly salary, which fact has not been denied by the respondent. The appellant has also stated in the counter affidavit about the property owned by the respondent, financial capability of the respondent to maintain herself. However, such averments made by the appellant in the counter affidavit have

not been disputed by the respondent by filing a reply statement. Further, in the affidavit filed by the respondent in support of the petition filed under Section 24 of the Hindu Marriage Act, she has not made any averment to the effect that she is not resourceful enough to maintain herself or she finds it difficult to maintain herself or she has no independent income to support herself. What she pleaded is that her salary is lesser than the salary received by the appellant and therefore, if the maintenance amount is awarded, her financial resourcefulness would match the status of the appellant/husband. Therefore, it is clear that the respondent is having independent income to support herself and in such circumstances, her claim for interim maintenance need not be considered. The court below awarded the amount on an erroneous reasoning that the earning of the respondent is half of the amount earned by the appellant and therefore she is entitled for maintenance. We are not in a position to accept such a reasoning assigned by the Family Court for awarding interim maintenance in favour of the respondent. Such a reasoning assigned by the Family Court is not in accordance with Section 24 of The Hindu Marriage Act. 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. In the present case, admittedly, the respondent sought for maintenance only to match her status with that of the financial status of the appellant, which is legally impermissible. The evidence on record clearly show that the respondent is employed and she is in a position to maintain herself and therefore she is not entitled for maintenance from the appellant.

11. The decision of the Honourable Supreme Court in the case of (Smt. Jasbir Kaur Schgal vs. The District Judge, Dehradun) reported in CDJ 1997 SC 280 relied on by the learned counsel for the respondent is factually distinguishable. In that case, the Honourable Supreme Court has noted that the wife is living with her elder daughter and she has no sufficient income or a shelter for her. On the other hand, it was noted that the husband therein is financially capable of paying maintenance and therefore, taking note of the status of the appellant, the maintenance amount was enhanced by the Honourable Supreme Court. In the present case, as we have already held, the respondent is financially resourceful enough and she is in a

position to maintain herself. Therefore, we hold that the Court below ought not to have directed the appellant to pay maintainence pendente lite to the respondent.

12. In the result, we set aside the Order dated 18.10.2016 passed in I.A. No. 922 of 2016 in O.P. No. 3651 of 2014 on the file of Principal Family Court at Chennai and allow the Civil Miscellaneous Appeal. No costs. Consequently, connected miscellaneous petition is closed. Having regard to the facts and circumstances of the case, we direct the learned Principal Family Court, Chennai to take up OP No. 3651 of 2014 pending on file and to dispose of the same on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this Judgment.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Principal Family Judge
Family Court
Chennai

+1 cC to Mr.T.S. Baskaran, advocate sr 38250
+1 CC to M/s. P.B. Ramanujam, Advocate sr 38260

CMA No. 2733 of 2016

SJ(CO)
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