

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.07.2017

Coram:

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

Civil Miscellaneous Appeal No.1894 of 2017

V.Sunanthini ..Appellant/Petitioner/Respondent

Versus

G.P.Rajkumar ..Respondent/Respondent/Petitioner

Civil Miscellaneous Appeal is filed under Section 19 (1) of the Family Courts Act, 1984 against the Order dated 22.05.2017 passed by the I Additional Family Court at Chennai in I.A.No.3654 of 2011 in O.P.No.3476 of 2008.

For Appellant .. Mr.J.Saravanavel
For Respondent .. Mr.R.Subramanian

JUDGMENT

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

This Civil Miscellaneous Appeal has been filed by the wife, seeking enhancement of interim maintenance of Rs.5,000/- ordered by the I Additional Family Court, Chennai, I.A.No.3654 of 2011 in O.P.No.3476 of 2008 under Section 24 of the Hindu Marriage Act.

2.The Appellant herein is the wife. The Respondent herein/husband had filed O.P.No.3476 of 2008 for divorce and the Appellant herein had filed O.P.No.976 of 2010 seeking restitution of conjugal rights. During the pendency of the above Original Petitions, the Appellant herein/wife had filed the above I.A.No.3654 of 2011 praying to direct the Respondent/husband to pay a sum of Rs.25,000/- per month towards interim maintenance for her.

3.The Family Court after considering the submissions and documentary evidence relied upon by both the parties and taking into consideration of the materials available on record, partly allowed the petition for interim maintenance and directed the Respondent/ husband to pay a sum of Rs.5,000/- per month towards interim maintenance to the son of the appellant herein from the date of petition viz., from 13.08.2011. Not satisfied with the order passed by the Family court, the wife had filed the present appeal seeking enhancement of interim maintenance.

4.Heard Mr.J.Saravanavel, learned counsel appearing for the Appellant and Mr.R.Subramanian, learned counsel appearing for the Respondent.

5.It was contended by the learned counsel for the appellant that the marriage between the appellant and the respondent was solemnized on 25.05.2005 at Tuticorin as per the Hindu rites and customs in the presence of elders and family members of both sides and thereafter, they were living in USA. Out of the wedlock the appellant delivered a male child on 28.07.2007 at USA and came back to India on 22.10.2007 and on that day itself the appellant and her child were deserted by the respondent from the Airport and they were not united till date. It was submitted that the respondent is a business man in the serviced apartments business and owns three cars and he was working as Senior Manager in CSC India Private Limited and earning not less than Rs.1,50,000/- per month and he was capable of paying Rs.25,000/- per month towards interim maintenance.

6.The learned counsel for the appellant further submitted that though several documents had been produced by the wife to prove the financial status of the husband, particularly the income tax Returns had been filed to show the annual income of the husband was Rs.13,12,876/- during the financial year 2011-2012 and further the perusal of income tax records shows that the annual income of the husband is ranging from Rs.7,22,569/- to Rs.13,12,876/- between the financial years 2007 to 2012, in the subsequent years the husband had disclosed lesser income in order to evade payment of interim maintenance. The learned counsel for the appellant/wife also submitted that the husband is a Director of two companies and that he is capable of earning more amount in the subsequent years.

7.The learned counsel for the respondent/husband opposed the claim of the appellant/wife contending that the appellant/wife is gainfully employed as Assistant Professor in Eswari Engineering College and drawing salary of more than Rs.30,000/- per month and she is capable of maintaining herself and further contended that though the respondent/husband was working as Senior Manager in CSC India Private Limited, on a false

complaint given by the appellant/wife, he had quit the company and from 2012 onwards and he has been doing freelance work and that there is no fixed income.

8.It was also further contended that the respondent/husband had purchased a flat in which the appellant/wife and her son are residing and he had been paying the monthly instalment of Rs.28,000/- towards the housing loan and he is also paying the school fees for his son who is studying in Padhma Seshadhri School and the school fees comes to Rs.3000/- per month and he is also paying Rs.2150/- towards Creech expenses. In view of the above, it is contended that the order passed by the Family Court was just and proper.

9.We have considered the rival submissions.

10.At the outset, it is to be kept in mind that the present appeal is against the order passed by the I Additional Family Court, Chennai, in I.A.No.3654 of 2011 in O.P.No.3476 of 2008, under Section 24 of the Hindu Marriage Act, which provides for monthly maintenance for the basic sustenance of the appellant and her child. While fixing the quantum of interim maintenance the status of the parties and the capacity of the respondent/husband to pay the maintenance, shall be taken into account. The case on hand, admittedly, the child is studying in a good school and is being taken care of by the mother. It is also admitted case that the appellant and her child are residing in the flat purchased by the respondent/husband and he is paying monthly instalment of Rs.28,000/- towards housing loan. Further it is also submitted that the husband is paying the school fees of Rs.3000/- per month apart from paying Rs.2,150/- per month towards Creech expenses. The petition is filed only for interim maintenance pending disposal of the main O.P. The learned counsel for the appellant strongly contended that taking into consideration the present cost of living the amount of Rs.5,000/- was meager and sought it to be enhanced to Rs.10,000/- per month. Though the learned counsel for the respondent vehemently opposed the enhancement, agreed to for the interim maintenance at Rs.7,500/- per month. We feel that taking into consideration the present cost of living and also taking into consideration the facts and circumstances of the case an amount of Rs.8,000/- per month towards interim maintenance would be reasonable and we enhance the interim maintenance from Rs.5,000/- to Rs.8,000/- accordingly.

11.However, it was stated by the learned counsel for the respondent/husband that the respondent had already been paying the interim maintenance amount at the rate of Rs.5,000/- per month and insisted that the amount already paid may be deducted from the arrears. In such circumstances, the respondent/husband

is directed to pay the balance arrears of interim maintenance at the rate of Rs.8,000/- per month from the date of filing of the petition after due calculation and deducting the amount already paid, within a period of four weeks from the date of receipt of copy of this order and continue to pay the interim maintenance at the rate of Rs.8000/- per month till the disposal of the main O.P. The I Additional Family Court, Chennai, is directed to dispose of the main O.Ps. within a period of three months from the date of receipt of copy of the order.

With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gr.

To
The I Additional Family Court at Chennai.

+ 1 cc to Mr. J. Saravanel, Advocate SR.51736
+ 1 cc to Mr. R. Subramanian, Advocate SR.52167

C.M.A.No.1894 of 2017

SJ(CO)
EU 18.08.17

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