

In the High Court of Judicature at Madras

Reserved on 26.07.2017

Pronounced on: 07.08.2017

Coram

The Honourable Mr. Justice R. SUBBIAH

and

The Hon'ble Mr. Justice A.D. JAGADISH CHANDIRA

C.M.A.No.1929 of 2017 and C.M.P.No.10418 of 2017

G.MuthukumarAppellant

..vs..

R.BhuvaneshwariRespondent

Civil Miscellaneous Appeal under Section 19 of Family Courts Act, 1984 against the Fair and decretal order dated 09.03.2017 in F.C.I.A.No.22 of 2017 in F.C.O.P No.137 of 2016, passed by the Family Judge, Chengalpet, granting maintenance pendent lite at Rs.2000/- p.m. to the minor child and Rs.4,000/- p.m to the respondent and expenses of proceedings at Rs.5,000/- under Section 24 of the Hindu Marriage Act.

For Appellant : Mr. D.Asenthamani

For Respondents : Mr.S.Sugendran

JUDGMENT

(Judgment of the court was delivered by A.D.JAGADISHCHANDIRA,J.,)

This Civil Miscellaneous Appeal has been filed by the appellant/husband, against the order dated 09.03.2017 in F.C.I.A.No.22 of 2017 in F.C.O.P No.137 of 2016, passed by the Family Judge, Chengalpet, directing the appellant to pay a sum of Rs.2000/- p.m. to the minor child and Rs.4,000/- p.m to the respondent/wife towards interim maintenance expenses from the date of petition and Rs.5,000/- towards litigation expenses under Section 24 of the Hindu Marriage Act.

2. Brief facts of the case are as follows:- The marriage between the appellant/husband and the respondent/wife was solemnized on 06.02.2014 at DV Rani Mahal, (Near Radha Theatre), Azhagesan Nagar, Chengalpet as per Hindu rites and custom. The said marriage was an arranged marriage and the same was held with the participation of all friends and relatives of both the

family. Out of the wedlock, a female child was born to them on 17.12.2014. Thereafter due to the marital discord the respondent is said to have left to her parents home and deserted him.

3. The appellant/husband had filed F.C.O.P.No.200 of 2015 on the file of the Family Court, Chengalpet, against the Respondent/wife u/s. 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights alleging that the respondent/wife had left the matrimonial home without any reason and though the appellant/husband had made several attempts to reunite with the respondent/wife, she has been adamant in her position and she is yet to join the appellant/husband.

4. The Respondent/wife had filed F.C.O.P.No.137 of 2016 on the file of the Family Court, Chengalpet, against the appellant/husband under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, for divorce on the allegation of cruelty and desertion.

5. In the meanwhile, F.C.O.P.No.200 of 2015 filed by the appellant/husband for restitution of conjugal rights was allowed by the Family Court, vide order dated 07.10.2016. However, F.C.O.P.No.137 of 2016 filed by the Respondent/wife is pending.

6. During the pendency of the F.C.O.P.No.137 of 2016, the respondent/wife had filed I.A. No.22 of 2017 u/s. 24 of the Hindu Marriage Act, praying to direct the appellant/husband to pay a sum of Rs.50,000/- per month towards the monthly maintenance to the her and her minor daughter to meet out the basic fundamental needs like food, shelter and clothing and to provide education to her daughter and Rs.20,000/- towards litigation expenses.

7. According to the Respondent/wife, the marriage between her and the Appellant took place on 06.02.2014 at Chengalpattu Town according to Hindu Sastras, rites and customs; that after the marriage the matrimonial home was set up at the Appellant's place and out of wedlock a female child was born on 17.12.2014 and the child aged about 2 years is under the care and custody of the Respondent; that from the date of marriage the Appellant was not having interest in the matrimonial life for the reasons not known to her, but whereas she was always ready and willing to lead the matrimonial life with the Appellant; that she has suffered cruelty and mental agony from the behavior and atrocities of the Appellant to the extent of threatening the Respondent with dire consequences from the date of marriage; that the Respondent though informed everything to the parents of the appellant, there was no response; that the appellant is in the habit of consuming alcohol every day and beating the Respondent continuously with sticks, iron rod and household articles in an inhuman way; that the matrimonial life between the Appellant and the Respondent was only for a period of 3

months and that too was with continued pain and suffering and that the Appellant had also planned for a second marriage with some other woman.

8. Further, the respondent has stated that she is a housewife and she is depending only the appellant/husband who is working as a Engineer in Chennai and drawing a salary of Rs.2,00,000/- per month. Therefore, he is capable of paying maintenance as demanded by the respondent/wife. Since the appellant did not give any money to the respondent and her child, she is entirely dependent on her aged sickly father for the personal needs of herself and her minor daughter.

9. The appellant/husband had filed a counter denying the allegations made by the respondent/wife and stated that the respondent without any valid reason left the matrimonial home; that though he had made several attempts to unite with her, she has been adamant in her position; and that in order to join with his wife, he has filed F.C.O.P.No.200 of 2015, praying for restitution of conjugal rights; and that even after the order was passed in F.C.O.P.No.200 of 2015 dated 07.10.2016, the respondent had not come to live with him; that the appellant is deprived of the joy of parenthood without any reason but only due to the adamancy of the respondent/wife; and further contended the respondent's claim of Rs.50,000/- per month towards maintenance and Rs.20,000/- towards litigation expenses is exorbitant; that this petition is filed only for the sake of harassment and further to escape from the legal obligation to stay with him along with the child as per the order passed by the Family Court, Chengalpattu in F.C.O.P.No.200 of 2015. Further the respondent is employed and earning and as such she is not entitled for maintenance.

10. It had been contended by the learned counsel appearing for the husband before the trial Court that since the F.C.O.P.No.200 of 2015 filed by the appellant for restitution of conjugal rights was allowed by the Family Court on 07.10.2016, the respondent/wife is not entitled to claim maintenance against the appellant/husband and in support of his arguments had relied upon the Judgment of the Learned Single Judge of the Madhya Pradesh High Court reported in Smt.Kiran-vs- Chandra Shekar [AIR 1998 MP 69], wherein the District Court had denied granting maintenance pendente lite and cost of litigation on the ground that in spite of the decree of restitution of conjugal rights the wife was staying with her parents and had not gone to her matrimonial home and the High Court had confirmed the order of the District Court and dismissed the revision filed by the wife and by placing reliance on the judgment had sought for dismissal of the petition for interim maintenance filed by the respondent/wife.

11. Per contra, it was contended by the learned counsel for the respondent before the trial Court that since the respondent/wife has filed F.C.O.P.No.137 of 2016 on for divorce on various allegations against the appellant/husband, on 20.09.2016 which is earlier to the order passed by the Family Court in F.C.O.P.No.200 of 2015, the respondent/wife is entitled for interim maintenance.

12. The learned Family Court, Chengalpattu, after hearing both sides, differentiated the facts of the case on hand stating that in the case referred by the counsel for the appellant/husband reported in Smt.Kiran-vs- Chandra Shekar [AIR 1998 MP 69] it was that the husband who had obtained a favourable order for restitution for conjugal rights and that since the wife had refused to join the husband even after one year of the order the husband had filed the petition for divorce and in that petition for divorce the wife had filed for interim maintenance and that was refused by the court and finding that in this present case it was the wife who had filed the petition for divorce on the ground of cruelty was pending and holding the facts to be different had allowed the petition and directed the appellant/husband to pay a sum of Rs.4,000/- per month to the respondent/wife and Rs.2,000/- per month to the minor child towards interim maintenance from the date of petition till the disposal of the petition and Rs.5,000/- towards litigation expenses and further directed that the interim maintenance amount be payable on or before the 5th day of every English Calendar month and the arrears of interim maintenance be paid in lump sum within 15 days from the date of order.

13. Challenging the above order, the present appeal has been filed.

14. Heard. Ms.D.Asenthamani, learned counsel for the appellant as well as Mr.S.Sugendran, learned counsel for the respondent.

15. The learned counsel for the appellant/husband submitted that the respondent/wife is employed and earning and that she is capable of maintaining herself and her child and submitted that the order passed by the learned Family Judge, Chengalpattu, granting Rs.4,000/- per month to the respondent/wife and Rs.2,000/- per month to the minor child towards interim maintenance from the date of petition till the disposal of the petition and Rs.5,000/- towards litigation expenses is on the higher side and thereby contended that the same is liable to set aside. The learned counsel for the appellant further contended that since the F.C.O.P.No.200 of 2015 filed by the appellant for restitution of conjugal rights was allowed by the Family Court

on 07.10.2016, the respondent/wife is not entitled to claim maintenance against the appellant/husband.

16. Per contra, it is the contention of the learned counsel for the respondent/wife that mere grant of a decree for restitution of conjugal rights in favour of the appellant cannot create a legal bar to claim maintenance by the respondent/wife who is a destitute wife and who has no income to maintain herself and her minor child, in terms of Section 24 of the Hindu Marriage Act. The learned counsel for the respondent/wife also relied upon a judgment reported in Sanjay Kumar vs. Bhateri reported in 2013 Supreme (P&H) 339, wherein a Division Bench of the Punjab-Haryana High Court had held that:

"Even otherwise, the mere grant of a decree for restitution of conjugal rights in favour of a husband cannot create a legal bar to claim maintenance by a destitute wife who has no income to maintain herself. We would hasten to add that disobedience of a decree for restitution of conjugal rights is not a ground in terms of section 24 of the HMA to deny claim for maintenance to a party who otherwise satisfy the ingredients of the said provision."

17. We accept the finding of the learned Family Court Judge with regard to the facts on hand in respect of differentiating the judgment of the learned Single Judge of the Madhya Pradesh High Court reported in Smt. Kiran vs. Chandra Shekar [AIR 1998 MP 69] and moreover the Division Bench of Punjab and Haryana reported in Sanjay Kumar vs. Bhateri reported in 2013 Supreme (P&H) 339, has held that mere grant of a decree for restitution of conjugal rights in favour of a husband cannot create a legal bar to claim maintenance by a destitute wife who has no income to maintain herself and that disobedience of a decree for restitution of conjugal rights is not a ground in terms of section 24 of the HMA to deny claim for maintenance to a party who otherwise satisfy the ingredients of the said provision.

18. Section 24 of the Hindu Marriage Act, 1955, is extracted hereunder:-

"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."

19. 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". In the case of Manish Jain v. Akanksha Jain [AIR 2017 SC 1640] which is extracted below:-

"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."

In the present case at the time of claiming maintenance pendent lite, the respondent/wife had no sufficient income capable of supporting herself, the Family court taking into consideration, has passed the order directing the appellant to pay interim maintenance of Rs.4,000/- per month to the respondent/wife and Rs.2,000/- per month to the minor child, further directing the appellant to pay Rs.5,000/- towards litigation expenses. 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 and the minor child during the pendency of the proceedings.

20. The Family Court Judge, taking into consideration, the evidence on record that the husband was working as an Engineer in a private firm and he was earning at Rs.2,00,000/- per month, had directed him to pay a sum of Rs.4,000/- per month to the respondent/wife and Rs.2,000/- to the minor child towards interim maintenance and Rs.5,000/- towards litigation expenses. Though it is the contention of the appellant that the Respondent was also earning, no proof was produced by the appellant in respect of the said contention.

21. In our view, in the present day cost of living expenses, a sum of Rs.6,000/- granted by the Family Court, Chengalpattu, towards interim maintenance to the respondent/wife and the minor

child, cannot be considered to be exorbitant and the same would be just and reasonable to maintain the wife and child. Therefore, we find no reason to interfere with the said order.

22. In the result, we confirm the order dated 09.03.2017 passed by the Family court, Chengalpattu, in F.C.I.A.No.22 of 2017 in F.C.O.P No.137 of 2016. The appellant/husband is hereby directed to pay the arrears of interim maintenance if any within a period of four weeks from today. Thereafter, the appellant shall continue to pay the future maintenance at the rate of Rs.4,000/- per month to the respondent/wife and Rs.2,000/- per month to the minor child, till the disposal of the main O.P.

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

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gr

To

1.The Family Court, Chengalpet

2.The Section Officer,
V.R. Section,
High Court,
Madras.

+ 1 cc to M/s.D.Asenthamani, Advocate,SR.57396

+ 1 cc to M/s.S.Sugendran, Advocate,SR.56724

C.M.A.No. 1929 of 2017

GMI (CO)
NR 03/10/2017

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