

In the High Court of Judicature at Madras

Dated : 12.09.2017

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The Hon'ble Mr.Justice R.SUBBIAH

and

The Hon'ble Mr.Justice P.VELMURUGAN

C.M.A.No.466 of 2016

and

CMP.No.3567 of 2016

Mangayarkarasi ..Appellant

..vs..

M.Kumaresan ..Respondent

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, against the order dated 12.01.2016 passed by the Family Court, Chengalpattu in I.A.No.295 of 2015 in F.C.O.P.No.180 of 2015.

For Appellant : Mr.K.Balaji
For Respondent : Mrs.R.Anitha

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

Being not satisfied with the quantum of interim maintenance awarded by the Family Court, Chengalpattu, the appellant-wife has filed this appeal, as against the order dated 12.01.2016 passed in I.A.No.295 of 2015 in F.C.O.P.No.180 of 2015, whereby, the Family Court has awarded a sum of Rs.1,000/- towards interim maintenance to the minor child viz., Lakshaya, till the disposal of the original petition.

2. The background facts in a nutshell are as follows:

2.1 The marriage between the appellant and the respondent was solemnized on 29.06.2012 at Selva Sri Thirumana Mandapam, Thiruazhukundram as per Hindu rites and rituals. Due to wedlock, a female child was born on 02.07.2013 and she was named as Lakshaya.

2.2 Due to misunderstanding that arose between the parties, the respondent-husband has filed a petition in FCOP.No.180 of 2015 under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, (for short, 'the Act') on the ground of cruelty.

2.3 During the pendency of the said FCOP, the appellant-wife has filed an Interlocutory Application in I.A.No.295 of 2015 under Section 26 of the Act seeking interim maintenance to the tune of Rs.10,000/- for her minor child.

2.4 The respondent -husband resisted the said application by filing a counter affidavit, inter alia, stating that the appellant -wife filed the application seeking interim maintenance under Section 26 of the Act, which deals with the custody of children, as such, the question of custody of child does not arise; the respondent - husband was earning only a sum of Rs.3,000/- per month by doing coolie works; and he is also taking care of his parents from the said amount. By stating so, he sought for the dismissal of the application.

2.5 By order dated 12.01.2016, the Family Court has awarded a sum of Rs.1,000/- towards interim maintenance to the minor child.

2.6 Aggrieved by the same, the appellant - wife has filed the present appeal seeking enhancement of the interim maintenance awarded by the Family Court.

3.Mr.K.Balaji, learned counsel for the appellant -wife submitted that the appellant - wife, being unemployed, has no source of income to maintain herself as well as her minor child, whereas, the respondent - husband is a business man, money lender and is also running unorganized chits etc and is earning not less than a sum of Rs.60,000/- per month. However, without considering the same in a proper perspective, the Family Court awarded only a meagre sum of Rs.1,000/- per month towards interim maintenance to the minor child. Thus, learned counsel prayed that considering the present day cost of living, the interim maintenance awarded by the Family Court has to be enhanced.

4.Per contra, Mrs.R.Anitha, learned counsel for the respondent - husband submitted that as per the order of the Family Court dated 24.11.2015, passed in I.A.No.188 of 2015 in FCOP.No.180 of 2015, the respondent -husband is regularly paying a sum of Rs.2,500/- per month towards interim maintenance to the appellant - wife. Despite the receipt of the interim maintenance, the appellant - wife filed the application seeking interim maintenance to the tune of Rs.10,000/- per month to the minor child. Learned counsel further submitted that the respondent - husband is now paying a sum of Rs.1,000/- per month towards interim maintenance to the minor child, as ordered by the Family Court. Learned counsel also submitted that the

respondent -husband is not a business man and is not earning a sum of Rs.60,000/- as alleged by the appellant - wife, but he is doing coolie works, by which, he is earning only a sum of Rs.3,000/- per month. Therefore, the interim maintenance of Rs.1,000/- per month awarded by the Family Court is very much reasonable, which does not call for any interference by this Court.

5.We have given our anxious consideration to the rival submissions made by the learned counsel on either side and perused the materials.

6.Before going 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."

7.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.

8.In the present case, the appellant - wife stated that the respondent - husband is doing finance business, by which, he is earning not less than Rs.60,000/- per month, however, she has not adduced any evidence to substantiate her case. When the application is filed by the appellant - wife seeking pendente lite maintenance, the burden of proof lies on her to establish her case, in order to get the relief as prayed for, whereas, no evidence either oral or documentary was produced to support the case of the appellant - wife. In the absence of any

concrete evidence to prove the income of the respondent - husband as Rs.60,000/- per month, we cannot go by such vague and bald statement made by the appellant - wife. It may not be out of place to mention at this juncture that the appellant - wife has been receiving a sum of Rs.2,500/- per month towards interim maintenance from the respondent - husband, as per the order of the Family Court in I.A.No.188 of 2015. Therefore, we are of the opinion that having regard to the facts and circumstances of the case and taking note of the financial position of the respondent - husband, the Family Court has rightly awarded a sum of Rs.1,000/- per month towards interim maintenance to the minor child, which does not call for any interference.

9. Accordingly, the Civil Miscellaneous Appeal fails and is dismissed. However, the learned Family Judge, Chengalpattu, is directed to dispose of the main petition in FCOP.No.180 of 2015 on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To
The Judge, Family Court, Chengalpattu.

+1cc to Mr.K.BALAJI Advocate, S.R.No. 67071

C.M.A.No.466 of 2016

LRS (CO)
TR(08/01/2018)

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