

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2017

Coram

The Honourable Mr.Justice R.SUBBIAH
and
The Honourable Mr.Justice A.D.JAGADISH CHANDIRA

C.M.A.No.2187 of 2017 &
CMP.NO.11612 OF 2017

Mr.B.Vinoth ... Appellant/Respondent/Petitioner

..vs..

1. V. Agathiya
2. Nilavan S/o. Agathiya
(Represented by his Natural Guardian
Mother-1st respondent)Respondents /Petitioners/
Respondents

Civil Miscellaneous Appeal under Section 19 of Family Courts Act, 1984 against the order and decretal order dated 19.12.2016 in I.A.No.1267 2016 in O.P No.2155 of 2015 on the file of the Principal Family Court at Chennai.

For Appellant : Mr. G. Thangavel

For Respondents : Mr.R. Thirumoorthy

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 19.12.2016 passed by the Principal Family Court, Chennai, in I.A. No.1267 of 2016 in O.P. No.2155 of 2015, directing the appellant to pay a sum of Rs.10,000/- per month to the first respondent/wife and second respondent/son towards interim maintenance including rent and medicine and other expenses from the date petition i.e. from 25.01.2016.

2.1 The brief facts of the case are as follows:- The appellant/husband had filed O.P. No.2155 of 2015 against the respondent u/s.13(i-a) of Hindu Marriage Act, 1955, for divorce, alleging mental cruelty. The marriage of the appellant and the first respondent was solemnized on 02.02.2014 at Jeevan Jothi Mahal, Ramapuram, Chennai - 600 089 with the consent of both parents of the appellant as well as respondent. Out of Wedlock, a male child was born to them. Thereafter due to the marital discord the 1st respondent left to her parents home and deserted him. The appellant/husband had stated that he is working as medical coder in the office Serco Company, situated at Ambattur Industrial Estate. Further, the allegation of the appellant in the Main O.P is that there was dispute between him and his wife due to influence of the parents since they were dictating terms and conditions in all the issues concerned in daily affair between them.

2.2 Thereafter, citing various conflicts that ensued between them, the appellant had filed O.P. No.2155 of 2015 before the Principal Family Court, Chennai, for divorce.

2.3. During the pendency main O.P., the first respondent/wife and second respondent/son had filed I.A. No.1267 of 2016 u/s.23(1) and (2) of the Protection of Women from Domestic Violence Act, 2005, praying to direct the appellant to allow the respondent to reside in a share household of the appellant under section 17 of the Protection of Women from Domestic Violence Act, and to pass Protection order under section 18 of the Act, restraining the appellant from causing any disturbance or threat to the first respondent and her child and further prayed to direct the appellant to pay a sum of Rs.20,000/- per month towards the monthly maintenance, which is essentially required for food, clothing and household expenses and further Rs.10,000/- per month, which is essentially required for medicine and other expenses for 1st respondent/wife and 2nd respondent/son under Section 20(d) of the Act (Monetary Relief) and to direct the appellant to return all the Gold, Silver and other articles belonging to first respondent and 2nd respondent/son.

3. According to the 1st respondent/wife, she has gone to her parent's place when she was pregnant and gave birth a male child on 26.10.2014. The appellant is stated to have visited the 1st respondent/wife and 2nd respondent/son only for three occasions and further had demanded the 1st respondent to bring 50 sovereigns of gold jewels and car and a house. Thereafter, on 07.06.2015, parents and relatives of the 1st respondent had left the 1st respondent and her child at the appellant/husband's house. Subsequently, due to harassment of the appellant/husband and his family members, she was forced to come out of the matrimonial home and stayed with her aged parents. Her father is

doing social work and her mother is earning a meager amount as income. Further, the 1st respondent/wife has stated that she is doing odd jobs to fulfill the basic needs of herself and her child. Since she found it difficult to nourish her child, she had claimed a sum of Rs.30,000/- per month towards maintenance for herself and her child.

4. Further, the 1st respondent/wife has stated that her husband is working as Medical Coder in the office of Serco Company, at Ambattur Industrial Estate, Chennai and drawing a salary of Rs.40,000/- per month. Therefore, he is capable of paying maintenance as demanded by the 1st respondent/wife and 2nd respondent/child.

5. The appellant/husband had filed a counter denying the allegations made by the first respondent/wife and stated that she is capable of maintaining herself and the 2nd respondent/child, as she had qualified in Electronic and Instrumentation Engineering and also employed in a private firm.

6. The appellant/husband herein had admitted that presently he is working as Team Coach in a Private Company and earning a sum of Rs.21,000/- per month and to take care of his basic needs, he prayed for dismissal of the petition.

7. The learned Principal Family Court, Chennai, after hearing both sides, allowed the petition and directed the appellant/husband to pay a sum of Rs.10,000/- per month to the 1st respondent/wife and the 2nd respondent/son towards interim maintenance including rent, medicine and other expenses from the date of petition i.e from 25.01.2016 and further directed that the interim maintenance amount be payable on every month shall be paid on or before the 5th of every succeeding English Calendar month.

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

9. Heard. Mr. G. Thangavel, learned counsel for the appellant as well as Mr. R. Thirumoorthy, learned counsel for the respondent.

10. The learned counsel for the appellant/husband submitted that the respondent/wife is qualified in Electronic Instrumentation Engineering and she was employed in a private firm and that she was capable of maintaining herself and her son and submitted that the order passed by the learned Principal Family Judge, Chennai, is on the higher side and thereby is liable to set aside.

11. On a perusal of the typed set filed along with the

appeal, it could be seen that the appellant/husband is employed in the company M/s. Intelenet Global Services Private Limited as Team Coach and is earning salary of Rs.24,487/- and then it is revised to Rs.27,737/- per month by upgrading his post.

12. The learned Counsel for the 1st respondent/wife submitted that the 1st respondent/wife is unemployed having a male child and is at the mercy of her age old parents.

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

14. At the outset, the appeal has been filed against the order dated 19.12.2016 passed by the learned Judge, Principal Family Court, Chennai, in I.A.No.1267 of 2015 in O.P.No.2155 of 2015 which provides for monthly maintenance for basic sustenance for the first respondent/wife and the second respondent/son who do not have independent income of their own. While fixing the quantum of interim maintenance, the status of the parties and the capacity of the husband to pay maintenance to be looked into.

15. The learned Principal Family Court Judge, taking into consideration the submissions made by the husband and the wife, the employment status of the husband as a team coach in a Software Company, had fixed an amount of Rs.10,000/- per month towards interim maintenance of the first respondent/wife and the second respondent/son.

16. 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."

17. 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 first respondent/wife had no sufficient income capable of supporting herself, the Family court taking into consideration, 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 first respondent/wife and the second respondent/son to support them during the pendency of the proceedings.

18. The Family Court Judge, taking into consideration, the admission of the husband that he was a team coach in a private firm and he was earning at Rs.21,000/- per month, taking note of his age and capacity to earn, has fixed his monthly income at Rs.30,000/- and had directed him to pay a sum of Rs.10,000/- per month to the first respondent/wife and second respondent/son towards interim maintenance including rent, medicine and other expenses.

19. In our view, a sum of Rs.10,000/- towards interim maintenance cannot be deemed to be exorbitant and the same would be just and reasonable to maintain the wife and son. Therefore, we find no infirmity in the said order.

20. In the result, we confirm the order dated 19.12.2016 passed by the Principal Family court, Chennai, in I.A.No.1267 of 2016 in O.P.No.2155 of 2015. 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 interim maintenance till the disposal of the main O.P.

21. Having regard to the facts and circumstances of the

case, the Principal Family Court, Chennai is directed to dispose of the main O.P.No.2155 of 2015 within a period of four months from the date of receipt of a copy of this judgment.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

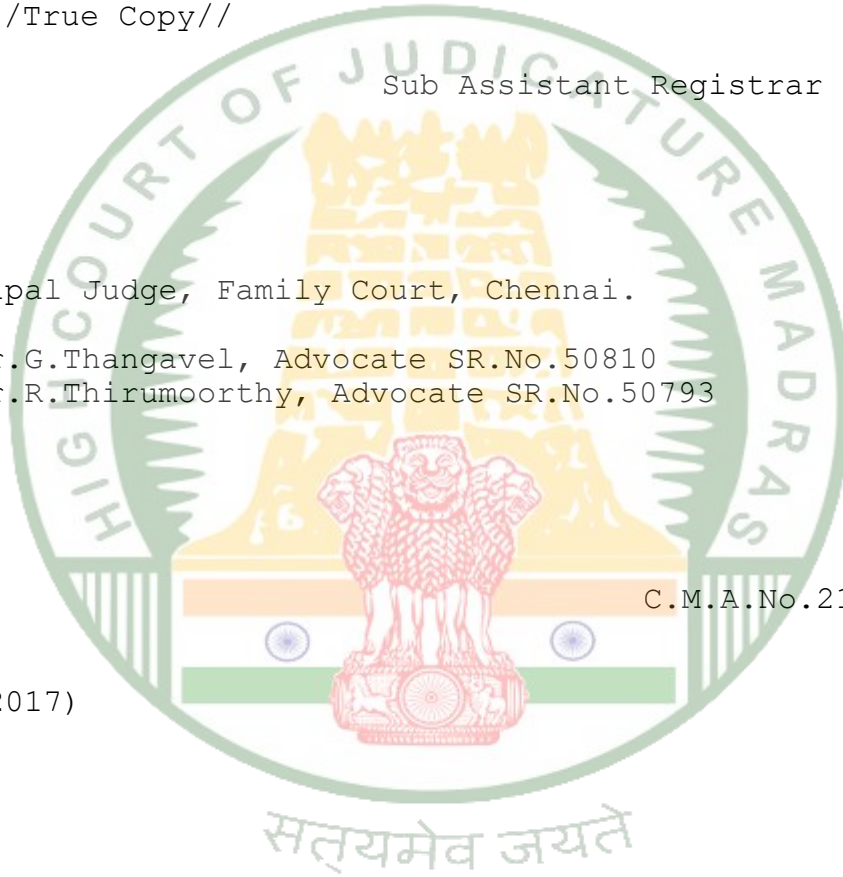
Bm/gr.

To
The Principal Judge, Family Court, Chennai.

+1cc to Mr.G.Thangavel, Advocate SR.No.50810
+1cc to Mr.R.Thirumoorthy, Advocate SR.No.50793

C.M.A.No.2187 of 2017

GR(CO)
GN(09/08/2017)



WEB COPY