

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 23 of 2017

G. Sasikumar

.. Appellant /Petitioner

Versus

M. Senbagam

.. Respondent /Respondent

Appeal filed under Section 19 (1) of the Family Courts Act, 1984 against the Fair and Decreetal Order dated 14.12.2016 passed in I.A. No. 732 of 2015 in H.M.O.P. No. 188 of 2014 on the file of Family Court, Erode

For Appellant : Mr. N.S. Sivakumar

For Respondent : Mr. G. Pavendhan

JUDGMENT

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

The appellant is the husband and the respondent is the wife. The appellant has filed H.M.O.P. No. 188 of 2014 under Section 13 (1) (i-a) of The Hindu Marriage Act before the Family Court, Erode praying for grant of a decree of divorce and to dissolve the marriage solemnised between him and the respondent on 14.02.2011 at Erode on the grounds of cruelty and desertion. Pending HMOP No. 188 of 2014, the respondent has filed I.A. No. 732 of 2015 in H.M.O.P. No. 188 of 2014 under Section 24 of The Hindu Marriage Act praying to direct the appellant to pay a sum of Rs.50,000/- per month as interim maintenance apart from Rs.50,000/- towards litigation expenses. The Family Court, upon considering the oral and documentary evidence, by the order dated 14.12.2016, directed the appellant to pay a sum of Rs.25,000/- per month to the respondent towards interim maintenance and Rs.20,000/- towards one time litigation expenses. Aggrieved by the said order dated 14.12.2016, the appellant has come forward with this appeal.

2. The marriage between the appellant and the respondent was solemnised on 14.02.2011 at Erode as per Hindu rites and customs. After the marriage, the appellant and the respondent stayed at Erode for some time and thereafter, the appellant left to London, where he is employed. After some time, the respondent also joined the appellant at London and continued their matrimonial home. Due to serious matrimonial dispute, the respondent left London and reached India on 13.10.2011. Hereafter, at the instance of the elders of both sides, the respondent went to London on 23.05.2013, but shortly thereafter, she once again returned to India. After exchange

of notice between the appellant and the respondent, the appellant has filed H.M.O.P. No.188 of 2014 for dissolution of the marriage solemnised between him and the respondent on 14.02.2011. The respondent resisted the Original Petition by filing a detailed counter affidavit.

3. Pending HMOP No. 188 of 2014, the respondent has filed I.A. No. 732 of 2015 in H.M.O.P. No. 188 of 2014 praying to direct the appellant to pay a sum of Rs.50,000/- per month as monthly maintenance and Rs.50,000/- towards litigation expenses. In the affidavit filed in support of I.A. No. 732 of 2015 it was stated by the respondent that she is living with her parents and she is depending them for her day to day basic financial needs. It was further stated that the appellant is earning more than Rs.2,00,000/- per month through his employment at London and leading a luxurious life, however, he is not paying any amount to her towards maintenance.

4. The appellant resisted the petition filed by the respondent for interim maintenance by contending that the respondent is an Engineering Graduate and she is working as Design Engineer in a reputed company at Bangalore and earning more than Rs.1,00,000/-. Therefore, according to the appellant, the respondent is capable of maintaining herself and she is not entitled to seek maintenance from him.

5. Before the Family Court, the respondent examined herself as PW1 and marked Ex.P1. On the side of the appellant, one Shankar was examined as RW1 through whom Exs. R1 to R4 were marked. The Family Court, on considering Ex.R2, concluded that the respondent/wife is employed and earning a sum of Rs.25,000/- per month. It was further held that the appellant is earning huge amount through his employment in London, as could be seen from Ex.P1. Therefore, the Family Court, directed the appellant to pay Rs.25,000/- per month as interim maintenance to the respondent herein apart from payment of Rs.20,000/- towards litigation expenses.

6. The learned counsel appearing for the appellant would vehemently contend that admittedly, the respondent is employed and earning Rs.25,000/- per month and it was also proved before the Family Court. While so, the Family Court ought not to have directed the appellant to pay a sum of Rs.25,000/- towards interim maintenance to the respondent. The amount earned by the respondent is just and sufficient to maintain herself and therefore he prayed for setting aside the order passed by the Family Court.

7. On the contrary, the learned counsel for the respondent would contend that the appellant is employed in London and earning more than Rs.2 lakhs per annum. While so, the Family Court is wholly justified in directing him to pay a meager sum of Rs.25,000/- per month towards interim maintenance even though the respondent had sought for a direction to the appellant to pay a sum of Rs.50,000/- per month. In such circumstances, the learned counsel for the respondent prayed for dismissal of the appeal.

8. We have considered the rival submissions and perused the materials placed on record. It is not in dispute that the respondent is employed and earning a sum of Rs.25,000/- per month. While so, in our opinion, the Family Court ought not to have directed the appellant to pay a sum of Rs.25,000/- per month towards interim maintenance. It is well settled that 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. Keeping in mind the above settled principles of law, we feel that even though the respondent is employed and earning a sum of around Rs.20,000/-, after deduction, interest of justice would be met if the appellant is directed to pay a sum of Rs.15,000/- per month to the respondent as against the sum of Rs.25,000/- ordered by the Family Court.

9. In the result, we modify the Order dated 14.12.2016 passed in I.A. No. 732 of 2015 in H.M.O.P. No. 188 of 2014 on the file of Family Court, Erode by directing the appellant to pay a sum of Rs.15,000/- per month towards interim maintenance. Accordingly, the Civil Miscellaneous Petition is disposed of. No costs. Consequently, connected CMP Nos. 157 and 14840 of 2017 are closed. Taking note of the fact that the Original Petition is pending from the year 2014, we direct the Family Court, Erode to take up the H.M.O.P. No. 188 of 2014 and to dispose it of within a period of four months from the date of receipt of a copy of this Judgment.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rsh

To
The Presiding Officer
Family Judge
Erode.

+1cc to Mr.S.Siva Kumar, Advocate, S.R.No.63254
+1cc to Mr.G.Pavendhan, Advocate, S.R.No.63264

CMA No. 23 of 2017

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