

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2017

Pronounced on : 10-11-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 2543 of 2017

Rejitha ... Appellant/Petitioner/Respondent

Versus

Vikram V. Rajkumar ... Respondent/Respondent/Petitioner

Appeal filed under Section 19 of The Family Courts Act against the Order and Decreetal Order dated 08.08.2017 passed in I.A. No. 2157 of 2015 in O.P. No. 4236 of 2013 on the file of Principal Family Court (i/c) of II Additional Principal Judge at Chennai.

For Appellant : Mr. S. Senthilnathan
For Respondent : Mr. R. Essakki Raja

JUDGMENT

R. SUBBIAH, J

This appeal is filed against the Order dated 08.08.2017 passed in I.A. No. 2157 of 2015 in O.P. No. 4236 of 2013 on the file of Principal Family Court (i/c) of II Additional Principal Subordinate Judge at Chennai, dismissing the application filed by the appellant herein under Section 24 of The Hindu Marriage Act for interim maintenance.

2. Brief facts, which are germane and necessary for disposal of this appeal are as follows.

3. The marriage between the appellant and the respondent was solemnised on 15.06.2012 in the office of the Sub-Registrar, Royapuram as per Hindu rites and customs. Such marriage was a love marriage between them. Thereafter, a marriage reception was arranged on 08.07.2012 at Hotel Palmgrove, Kodambakkam High Road, Chennai in the morning followed by another reception at Hotel Radisson Blue, near Chennai Airport on the same day in the evening. At the time of marriage, the respondent was carrying

on transportation business and the appellant was working in Omega Airlines. After the marriage, the respondent and the appellant resided in a rented house at No.25, Kothari Nagar 1st Street, Nesapakkam, K.K. Nagar, Chennai for which the respondent herein has paid a sum of Rs.1 lakhs towards advance. According to the respondent, the marriage life went on peacefully for about three months and thereafter, differences cropped between the spouse. According to the respondent, the appellant wanted to lead a wayward life and expected the respondent to fulfil very many demands. It is the contention of the respondent that he sustained heavy loss in the business and in fact attempted to get an employment for a monthly salary. Even for settling the debts incurred by the respondent, he had pledged the jewels of the appellant and with the balance amount, he was running the family. It was further contended by the respondent that when he could not fulfil the demands of the appellant for purchase of clothing, accessory etc., as wished by her, she used to hit, bite and scratch the respondent. On hearing the quarrel between the appellant and the respondent at frequent interval, the house owner asked them to vacate the rented house and therefore, the respondent shifted the residence to Alandur, as wished by the appellant, as the rented house was very near to her parents house. Even at the rented house at Alandur, the quarrel between the respondent and appellant continued and on several occasion, the appellant threatened that she would commit suicide by leaving a suicide note implicating the respondent for her death. According to the respondent, on one such quarrel, the appellant openly uttered that she is not inclined to live with the respondent as the respondent could not fulfil her demands. The respondent, unable to tolerate the appellant's continued harassment, has even fulfilled the demands of the appellant by borrowing money from third parties. It was further contended that as he was not even allowed to sleep peacefully and the appellant continuously nagged him with various demands, apprehending that he may be at fault for any act that may be done by the appellant, he has given a police complaint on 28.10.2013 to the Commissioner of Police, Greater Chennai highlighting the threat given by the appellant. Thereafter, the respondent has filed OP No. 4236 of 2013 before the II Additional Family Court, Chennai under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage.

4. Opposing the Petition filed by the respondent in OP No. 4236 of 2013, the appellant has filed a counter affidavit contending that at the time of marriage, her parents have offered 60 sovereigns of gold jewellery and Rs.10,00,000/- in cash besides all house hold articles for running a separate family. The respondent admitted that the appellant and the respondent were in love with each other and on 15.06.2012, their marriage was registered in the office of the Sub-Registrar,

Royapuram. According to the appellant, even for the marriage reception celebrated at Hotel Palmgroove as well as at Hotel Radisson Blue, her parents have incurred the expenses. It is the contention of the appellant that even before the marriage, the respondent was heavily indebted and therefore, after marriage, the appellant gave all the gold ornaments offered by her parents at the time of marriage and they were pledged to settle the debtors. After marriage, the appellant and the respondent resided at a rental house at K.K. Nagar, Chennai. However, the respondent could not pay the rent and therefore, they have vacated the rented house and shifted to Alandur and the shifting of the rented house was not as narrated by the respondent. Even though the appellant and the respondent confronted a very bad financial situation, the respondent refused to go for any employment and he simply enjoyed the amount received by pledging the jewels of the appellant for leading a wayward life. On the other hand, the parents of the respondent demanded the appellant to bring more amount towards dowry so as to enable the respondent to start a new business. On 28.10.2013, the respondent left the matrimonial home and thereafter, he did not return home. When the appellant called the respondent over phone, he simply stated that he is not interested to live with the appellant or to return back to the matrimonial home. Even though the appellant persuaded the respondent to return back to the matrimonial home, he refused to do so. According to the appellant, she did not inflict any matrimonial cruelty on the respondent, rather, she was subjected to mental cruelty due to the act of the respondent. The respondent left the appellant in lurch from 28.10.2013 and thereafter, he did not bother to even attend the phone calls made by the appellant. In such circumstances, the appellant prayed for dismissal of the Original Petition filed by the respondent for dissolution of the marriage.

5. Pending the Original Petition filed by the respondent for dissolution of marriage, the appellant filed I.A. No. 2157 of 2015 under Section 24 of The Hindu Marriage Act seeking interim maintenance. While reiterating the averments contained in the counter filed in OP No. 4236 of 2013, the appellant would contend that from the date of marriage, the respondent did not earn any money and failed to even fulfil her basic needs. Whenever the respondent asked the appellant to secure some employment to earn money, he quarrelled with the appellant. Even the appellant could not pay the rent for the rented premises and the rent was deducted by the owner of the house from and out of the advance amount paid by the appellant. While so, the respondent deserted the appellant on 28.10.2013 without any justifiable cause and inspite of repeated request, he did not turn up to the matrimonial home. On 15.11.2003, the brother of the appellant went to the parents house of the respondent and

requested the parents of the respondent to send the respondent to the matrimonial home to lead a happy matrimonial life with the appellant, but the parents of the respondent imposed a pre-condition to bring Rs.20,00,000/- as dowry for re-union. Above all, it was contended by the appellant that she had no independent source of income and she finds it difficult to even pay the rent for the premises in her occupation besides she could not earn any amount to fulfil her basic needs. Therefore, the appellant prayed for directing the respondent to pay Rs.20,000/- per month towards interim maintenance and litigation expenses.

6. Countering the petition filed for interim maintenance, the respondent filed a counter statement. In the counter statement, the respondent has referred to the Petition filed by the appellant in S.T.C. No. 10791 of 2013 before the Judicial Magistrate, Alandur seeking a protection order by invoking the provisions of Protection of Women from Domestic Violence Act, 2005. As regards the claim for interim maintenance, while reiterating the averments made in the Petition filed by the respondent for dissolution of the marriage, it was stated that the appellant is working as a Director in a company called Tesmay Events and Conferences and she holds an account with INDUSIND Bank, Nungambakkam Branch. Therefore, it was submitted that the appellant is capable of maintaining herself. On the other hand, the respondent is without any employment and he has incurred heavy debts. The respondent has no wherewithal to pay the amount claimed as interim maintenance and therefore, he prayed for dismissal of the petition.

7. The respondent has also filed an additional counter affidavit in I.A. No. 2157 of 2015 in which he has stated that he has filed certain photographs to show that the appellant is leading an adulterous life thereby she has subjected the respondent to cruelty.

8. The appellant has filed a reply to the additional counter affidavit contending inter alia that mere photographs filed along with the additional counter affidavit are not sufficient to prove that she is leading an adulterous life. In the Petition filed by the respondent for dissolution of the marriage, he has not raised any allegation as regards adultery but only for the first time, by way of additional counter affidavit, he has made such reckless allegation against the appellant. When the respondent did not raise any allegation regarding adultery in the Original petition, he is estopped from raising the same in the additional counter affidavit to the petition filed by the appellant for interim maintenance. The photographs filed by the respondent are inadmissible in evidence and they cannot be treated as primary evidence. Therefore, the

appellant prayed for rejecting the plea of adultery raised by the respondent.

9. Before the Family Court, in order to prove the averments in I.A. No. 2157 of 2015 in OP No. 4236 of 2013, the appellant marked Exs. P1 to P4 and on the side of the respondent, Ex.R1 to R5 were marked, but no one was examined as witness on either side. The Family Court, on appreciation of the documentary evidence concluded that the appellant has not proved the earning capacity of the respondent to pay interim maintenance. Even according to the appellant, the respondent is without any employment and he is heavily indebted. When it was admitted by the appellant that the respondent is without any source of income, the claim of the appellant to direct the respondent to pay interim maintenance cannot be sustained. Further, in the absence of proof of income of the respondent, the direction sought for in the application for interim maintenance cannot be sustained. Accordingly, the Family Court dismissed the application filed by the appellant for interim maintenance. Aggrieved by the same, the present appeal is filed by the appellant.

10. The learned counsel for the appellant would contend that the Family Court erred in dismissing the application for interim maintenance without considering the fact that the respondent has failed to disclose his income. The Family Court failed to consider that it is not necessary for the appellant to prove the income of the respondent when he has not come forward with any documentary evidence showing his earning capacity. When the appellant and the respondent are residing separately from 28.10.2013, it is not possible for the appellant to ascertain the earning capacity of the respondent. In such circumstances, the learned counsel appearing for the appellant prayed for allowing this appeal.

11. Per contra, the learned counsel for the respondent would contend that even as admitted by the appellant, the respondent is without employment and he is depending upon his parents for his livelihood. Further, the respondent sustained immense loss in the business hitherto carried on by him and he is heavily indebted to the creditors. On the other hand, the appellant is employed and earning from her employment and she has the wherewithal to maintain herself. The Family Court, pointing out the admissions made by the appellant as regards the debts incurred by the respondent and his inability to secure any employment, has rightly dismissed the application filed by the appellant under Section 24 of The Hindu Marriage Act. Therefore, the learned counsel for the respondent prayed for dismissal of the appeal.

12. We have heard the counsel for both sides and perused

the materials placed on record. It is the main contention of the counsel for the appellant that since the appellant and the respondent are living separately from 28.10.2013, the appellant cannot be expected to produce proof to show the income of the respondent. It is his further contention that even in the absence of proof of evidence showing the actual earning of the respondent, the Court below ought to have granted interim maintenance to the appellant/wife as prayed for. We are not inclined to accept such submission of the counsel for the appellant. In the counter affidavit filed by the appellant in OP No. 4236 of 2013 as well as in the application filed by the appellant in I.A. No. 2157 of 2015 in OP No. 4236 of 2013, the appellant has categorically admitted that the respondent is not employed anywhere, he has incurred heavy debts and he could not even pay the rent for the premises in their occupation. Further, even before the Family Court, the appellant has not filed any documentary evidence to show the income of the respondent. In the absence of any documentary evidence, the Family Court is wholly justified in dismissing the application filed by the appellant for interim maintenance. In this context, useful reference can be made to the Order dated 30.03.2017 passed by the Honourable Supreme Court in Civil Appeal No. 4615 of 2017 (arising out of SLP (C) No. 7670 of 2014) in the case of (Manish Jain vs. Akansha Jain) wherein in Para No.14 and 15, it has been held as follows:-

"14. Section 24 of the Hindu Marriage Act empowers the Court in any proceeding under the Act, if 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is Maintenance pendente lite and expenses of proceedings. The Section, however, does not use the word maintenance, but the word support can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

25. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The

Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation, the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."

13. Further, Section 24 of the Hindu Marriage Act, which confers a discretion on the Court to grant pendente lite maintenance, 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."

14. 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. In the present case, in the counter affidavit filed by the respondent in I.A. No. 2157 of 2015, reference was made to the employment of the appellant and contended that the appellant is getting regular income as salary and she is capable of maintaining herself. However, such averments made by the respondent in the counter affidavit have not been disputed by the appellant by any other contra evidence. 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. In the present case, admittedly, there is no evidence brought on record to show the actual income of the respondent. While so, we refrain from interfering with the order passed by the Family Court.

15. In the result, we confirm the Order dated 08.08.2017 passed in I.A. No. 2157 of 2015 in O.P. No. 4236 of 2013 on the file of Principal Family Court (i/c) of II Additional Principal Subordinate Judge at Chennai. Consequently, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

THE PRESIDING OFFICER(I/C)
(II ADDL PRINCIPAL SUBORDINATE JUDGE)
PRINCIPAL FAMILY COURT
CHENNAI

COPY TO

THE RECORD KEEPER,
V.R. SECTION,
HIGH COURT, MADRAS.

सत्यमेव जयते

Pre-delivery Judgment in
CMA No. 2543 of 2017

MG (CO)
TR(29/11/2017)

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