

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09-08-2018

Pronounced on : 19-09-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Civil Miscellaneous Appeal No. 1130 of 2018
and
C.M.P. No. 12620 of 2018

M.S. Bhavani .. Appellant

Versus

S. Rajesh Kannan .. Respondent

Appeal filed under Section 19 (1) of Family Court Act read with Order 43 Rule 1 of CPC against the Decree and Order dated 02.04.2018 passed in I.A. No. 103 of 2018 in O.P. No. 109 of 2017 on the file of the Family Court, Chengalpattu.

For Appellant : Mrs. CR. Rukmani
For Respondent : Mr. S. Rajendra Kumar
for Mr. Velmurugan

JUDGMENT

R. Subbiah, J

This appeal has been filed by the appellant, not being satisfied with the quantum of pendente lite maintenance awarded by the Family Court, Chengalpattu in and by the order dated 02.04.2018 passed in I.A. No. 103 of 2018 in O.P. No. 109 of 2017.

2. The respondent herein has filed O.P. No. 109 of 2017 before the Family Court, Chengalpattu contending that he married the appellant on 09.09.2013 and the marriage was solemnised at D.V. Rani Mahal Thirumana Mandapam, Chengalpattu as per Hindu rites and customs. Due to the wedlock, on 23.09.2015, a male child was born. According to the respondent, the appellant deserted his matrimonial company without any just or sufficient reason, hence, he filed HMOP No. 109 of 2016 before the Family Court, Chengalpattu for restitution of conjugal rights. Subsequently, on 20.12.2016, the respondent filed a memo seeking to withdraw HMOP No. 109 of 2016 with liberty to file a petition for dissolution of marriage on the ground of desertion. Accordingly, HMOP No. 109 of 2016 was dismissed as withdrawn on 20.12.2016. Thereafter, the respondent has filed the instant FCOP No. 109 of 2017 for dissolution of the marriage on the ground of desertion.

3. On notice, the appellant filed I.A. No. 103 of 2018 in FCOP No. 109 of 2017 contending that after the birth of the child, the respondent left her in the lurch and did not care even to see her and the minor child in her parents house. The appellant is not employed and she is fully depended on her parents for even petty expenses for herself and the minor child. On the other hand, the respondent is working in Bahrain and is earning 2000 Bahrain Dinars per month which is equivalent to 3,50,000/- Indian rupee. The respondent, as a father, is having a legal obligation to provide maintenance to the appellant and the minor children. On the contrary, he is spending the entire amount received as monthly salary for himself, his parents and sisters without providing any amount to her towards maintenance. As she has no wherewithal and is not resourceful enough to maintain herself and the minor child, the appellant has filed I.A. No. 103 of 2018 praying to direct the respondent to pay a sum of Rs.30,000/- as monthly maintenance to herself, Rs.35,000/- as monthly maintenance to the minor son Pragadeeshwaran and Rs.15,000/- per month towards litigation expenses.

4. The respondent has filed a counter affidavit in I.A. No. 103 of 2018 in FCOP No. 109 of 2017 contending inter alia that when the appellant left his matrimonial company without just and sufficient reason, she is not entitled for payment of maintenance amount. As regards his employment, the respondent contended that he resigned his job at Bahrain and returned back to Chennai even during September 2017. Presently, the respondent is earning Rs.75,000/- per month through his employment in Chennai out of which Rs.45,000/- is being deducted towards the housing loan availed by him. When the respondent is ready and willing to live with the appellant and that the appellant failed and neglected to rejoin him in the matrimonial home, the petition seeking pendente lite maintenance is legally not sustainable.

5. Before the Family Court, the appellant as well as the respondent did not let in any oral evidence, however, on behalf of the appellant, Exs. P1 to P2 were marked and on behalf of the respondent Exs. R1 to R6 were marked. The Family Court, on analysing the documentary evidence filed by the appellant as well as the respondent, directed the respondent to pay a sum of Rs.6,500/- to the respondent, Rs.3,500/- to the minor son totalling a sum of Rs.10,000/- towards monthly maintenance and Rs.5,000/- towards one time litigation expenses. It is this order dated 02.04.2018 of the Family Court, Chengalpattu which is challenged in this appeal.

6. The learned counsel for the appellant would contend that even as admitted by the respondent, he is earning a sum of Rs.75,000/- per month. On the other hand, the appellant is unemployed and she is wholly dependent on her parents even for her petty expenses and that the appellant finds it extremely difficult to maintain herself and the minor boy. The respondent, as husband of the appellant and father of the minor boy, is bound to maintain them during the pendency of the

matrimonial proceedings. Even though the respondent had resigned his employment at Bahrain, he has not furnished the details of the amount, which he had earned, through his employment at Bahrain. Further, even though the respondent alleged that he is repaying amount towards housing loan, he has not furnished the particulars as to when he had availed the loan, what is the period of loan, what is the amount paid towards principal and interest etc., In fact, the documents filed on behalf of the respondent only discloses his financial status, while so, the Court below ought to have awarded atleast 1/3rd of the earning of the respondent as pendente lite maintenance for the appellant and the minor son instead of awarding only a sum of Rs.10,000/- per month. In support of this contention, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in the case of (Manish Jain vs. Akanksha Jain) reported in (2017) 15 Supreme Court Cases 801 to contend that while awarding maintenance, the Court has to consider the capacity of the husband or wife to pay maintenance to the other and the reasonable expenses which a spouse is expected to incur. In Para No.16 of the said judgment, it was held as follows:-

"16. An order of 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 to her or his support. Maintenance is always dependent upon a factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."

7. Per contra, the learned counsel for the respondent would contend that before the Family Court, the respondent has filed Exs. R1 to R6 to show his financial capacity and the expenses which he has to reasonably incur for the medical expenses of his aged parents apart from the expenses to be incurred for himself. Furthermore, the respondent has also filed Ex.R4, certificate issued by the Bank to show that he has availed housing loan and a major part of the salary earned by him is being deducted towards the said loan. While so, the Family Court ought not to have directed the respondent to pay a sum of Rs.10,000/- as pendente lite maintenance for the appellant and the minor son.

8. We have heard the counsel for both sides and perused the materials placed on record. Admittedly, due to the wedlock between the appellant and the respondent, a male child was born and the minor child is in the custody of the appellant. It is also an admitted case that the appellant, along with the minor child, are residing separately in the parents house of the appellant for the past more than two years. It is also an admitted fact that the appellant is not employed gainfully and in the affidavit filed in support of I.A. No. 103 of 2018, she has stated that she is unemployed, she has no means to survive and she is depending on her parents to meet her day to day expenses apart from the expenses to be incurred for the minor son. This averment of the appellant is not denied by the respondent. Further, the respondent is employed and even as admitted by him, he is earning a sum of Rs.75,000/- per month. It is the contention of the respondent that a major part of his salary is being paid towards the housing loan availed by him and that apart, he has to meet the medical expenses of his aged parents. In effect, it is the contention of the respondent that the salary he receives through his employment is just and sufficient to meet his own commitments.

9. The respondent is the husband of the appellant and father of the minor son Pragadeeswaran. Due to a matrimonial dispute, the appellant and the respondent are residing separately. The respondent has filed the instant F.C.O.P. No. 109 of 2017 for dissolution of the marriage on the ground of desertion. Therefore, pending the matrimonial proceedings, it is the obligation of the respondent to maintain the appellant and the minor son. Such an obligation on the part of the respondent is not only legal but also moral. When the appellant is not employed gainfully and she is unable to maintain herself and the minor child, it is the bounden duty of the respondent to pay pendente lite maintenance to her as contemplated under Section 24 of The Hindu Marriage Act.

10. For granting pendente lite maintenance, the Court has to examine the financial capacity and the reasonable needs of the husband or wife as the case may be. In the present case, the Family Court has awarded a total sum of Rs.10,000/- as pendente lite maintenance to the appellant and the minor son. The minor son is now 2 1/2 years old. Taking note of the above, if the reasonable expenses that the appellant may required to incur, is presumed, this Court is of the view that the sum of Rs.10,000/- awarded by the Family Court, towards pendente lite maintenance is grossly insufficient given the present day cost of living. Therefore, while taking note of the salary received by the respondent through his employment and his obligation to maintain the appellant and the minor son, we are of the considered view that the amount awarded by the Family Court is required only to be enhanced to atleast Rs.10,000/- to the appellant and another Rs.5,000/- per month to the minor son, totalling a sum of Rs.15,000/- per month, which would meet the ends of justice.

11. Accordingly, we modify the Order dated dated 02.04.2018 passed in I.A. No. 103 of 2018 in O.P. No. 109 of 2017 on the file of the Family Court, Chengalpattu. by directing the respondent/husband to pay to the appellant/wife, a sum of Rs.10,000/- per month and another sum of Rs.5,000/- per month to the minor son Pragadeeswaran towards pendente lite maintenance, totalling a sum of Rs.15,000/- per month as against the sum of Rs.10,000/- awarded by the Family Court. Resultantly, C.M.A. No. 1130 of 2018 filed by the appellant is allowed . No costs. Consequently, CMP No. 12620 of 2018 is closed.

12. Taking into account the over all facts and circumstance of the case, we direct the Family Court, Chengalpattu to take up HMOP No. 109 of 2017 filed by the husband/respondent and dispose of the same on merits and in accordance with law on or before 28.02.2019.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Judge, Family Court, Chengalpattu.

+ 1 cc to Ms. C.R. Rukmani, Advocate Sr.65219

+ 1 cc to Mr. M. Suresh, Advocate Sr.65120

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CMA No. 1130 of 2018

GJ(CO)

EU(16/10/2018)

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