

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2018

Pronounced on : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal Nos.118 and 152 of 2018

and CMP.No.1903 of 2018

L.Gowthaman ... Appellant in both CMAs.

Vs.

G.Padmini ... Respondent in both CMAs.

Prayer in CMA.No.118 of 2018 : Civil Miscellaneous Appeal filed under Section 19 of Family Court Act 1984 to set aside the fair order and decretal order dated 14.11.2017 made in HMOP.No.1967 of 2014 on the file of the learned Principal Judge, Family Court, Chennai.

Prayer in CMA.No.152 of 2018 : Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984 to set aside the fair order and decretal order dated 14.11.2017 made in I.A.No.1248 of 2017 in HMOP.No.1967 of 2014 on file of the learned Principal Judge, Family Court, Chennai.

For Appellant (in both CMAs.) : Mr.M.Venkatesan

For Respondent (in both CMAs.) : Mrs.Manjula Chavan

C O M M O N J U D G M E N T

C.SARAVANAN

Both these appeals arise out of a common fair and decretal orders dated 14.11.2017 passed by the learned Principal Judge, Family Court, Chennai in H.M.O.P.No.1967 of 2014 and I.A.No. 1248 of 2017 in H.M.O.P.No.1967 of 2014 (for brevity referred to as the impugned order and the Family Court respectively).

2. H.M.O.P.No.1967 of 2014 was filed by the appellant-husband for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 before the Family Court.

3. Just before the hearing was to take place, the respondent-wife filed I.A.No.1248 of 2017 in H.M.O.P.No.1967 of 2014 under Section 24 of the said Act for interim maintenance of Rs.25,000/-p.m for herself and the two children born to them before the Family Court.

4. By the impugned order dated 14.11.2017, the Learned Judge of the Family Court has dismissed H.M.O.P.No.1967 of 2014 filed by the appellant-husband for the restitution of the conjugal rights while partly allowing the relief to the respondent-wife in I.A.1248 of 2014 in H.M.O.P.No.1967 of 2014 for interim maintenance under Section 24 of the Hindu Marriage Act, 1955.

5. The Lower Court has limited the interim maintenance to Rs.6,000/- p.m. payable from 01/05/2017 till the disposal of proceeding i.e. 14/11/2017. The Lower Court has also awarded a sum of Rs.5,000/- towards litigation expenses to the respondent-wife. In all, the appellant-husband has been directed to pay a sum of Rs.44,000 /- to the respondent-wife.

6. Aggrieved by the impugned orders passed by the Family Court in the respective petitions, the appellant-husband has filed the above two Civil Miscellaneous Appeals.

7. It is the case of the appellant-husband that he is entitled for restitution of conjugal rights and is willing to lead a peaceful matrimonial life with respondent-wife and children in a separate house that may be set up her parents as per the averments in para 7 of the Counter filed in H.M.O.P No.1967 of 2014. Para 7 of the counter reads as under:-

"The Respondent further states that the petitioner voluntarily deserted the Respondent* and the children and staying away without any rhymes and reasons. The petitioner has not made any attempt to visit the children and the Respondent. The Respondent* is ready and willing to join with the petitioner where the Respondent parents provided a separate house for the petitioner and the Respondent*.

(Note: The respondent in the above paragraph is the respondent-wife in this

appeal)

8. In the grounds of appeal, it is submitted that despite the above admission, the Family Court has passed the impugned order while dismissing the petition for restitution of conjugal rights.

9. The appellant-husband states that he was working in a printing press run by his father and was earning a sum of Rs.12,000/- p.m though the respondent-wife would state that he was earning Rs.25,000/-p.m. in her petition for interim maintenance.

10. The appellant-husband further states that at the insistence of his in-laws, he agreed to start his matrimonial life at the respondent-wife's parent's house after the marriage was solemnised on 09.10.2008.

11. According to the appellant-husband, the respondent-wife worked in the house only to take care of her sick mother and neglected him. It was further stated that because of her affluent background, he was teased and humiliated in his in-laws house. Interference from his in-laws also lead to frequent quarrel between them.

12. According to the appellant- husband, his father arranged for a separate house in the same locality for them in a bid to broker a peace between the feuding couple.

13. The appellant-husband claims to have paid rent and advance for the same and that they lived together there almost for a year and half.

14. According to the appellant-husband, the respondent-wife along with the children deserted him during January 2014 to return back to her parents(i.e.his in-laws house).

15. It also the case of the appellant-husband that the wife demanded luxury beyond his means and teased and scolded him and deserted him along with the children during the second week of January, 2014.

16. The appellant-husband has further averred that his father-in-law and the brother-in-law used men and money and assaulted him leading to his hospitalisation for five days and eventual filing of criminal complaint by him against his in-laws though police refused to issue FIR.

17. Therefore, he had filed Criminal.O.P.No.7580 of 2014 before this Court and secured a direction to investigate. Though, order was passed in the said proceeding, FIR is yet to

be registered.

18. On the other hand, the respondent-wife states that the husband used to consume alcohol and assaulted her and verbally abused her parents. The respondent-wife has also filed criminal complaint against the appellant-husband for domestic violence.

19. While, rival criminal proceedings were pending against each other, the appellant-Husband filed H.M.O.P No.1967 of 2014 for restitution of

conjugal rights and later the I.A by the respondent-wife before the Family Court for interim maintenance.

20. Heard respective counsel for the appellant-husband and the respondent-wife.

21. The learned counsel for the appellant-husband drew our attention to paragraph 7 of the counter filed by the respondent-wife in H.M.O.P No.1967 of 2014 as extracted in the beginning of this judgement and therefore prayed that C.M.A No.118 of 2018 be allowed for restitution of conjugal rights.

22. The learned Counsel for the appellant-husband also drew our attention to the various parts of the deposition and cross-examination, wherein the respondent-wife has stated that she was not willing to live with the appellant-husband, though the appellant-husband had reached out to her on several occasion with a request to join him.

23. Per contra, the learned Counsel for the respondent-wife has stated that the appellant-husband was abusive and a drunkard and frequently assaulted the respondent-wife leading to her initiate criminal proceedings against her.

24. There is also admission on record that the appellant-husband has failed to discharge his family duties as a husband and a father and had not contributed money for maintenance of the respondent-wife and two children.

25. The learned Counsel for the respondent-wife further states that the appellant-husband filed both H.M.O.P No.1967 of 2014 and CrI.O.P.No.7580 of 2014 only to avoid the consequence in the enquiry in the Criminal complaint filed by the respondent-wife/her parents against the appellant-husband and that the Petition filed before the Family Court and the present Appeal were not bonafide.

26. The learned counsel would further state that H.M.O.P No.1967 of 2014 was used as a ploy to divert the attention of

the Court.

27. The learned counsel drew our attention to the fact that the appellant-husband never contributed monetarily to the respondent-wife. It was further submitted that the appellant-husband frequently deserted to frequently to live with his parents for days together. The learned counsel also draw our attention to the cross examination of the appellant-husband wherein it was clearly admitted that it was the appellant-husband who left the matrimonial home from his in-laws house on 17.03.2014 and not otherwise as claimed by the appellant-husband.

28. According to the respondent-wife, the deposition of RW-2 who is none other than the appellant-husband's maternal uncle also clearly establishes that the appellant-husband was not of goods disposition and character and was unfit for an order for restitution of conjugal rights.

29. However, the appellant-husband's in his deposition has stated that the deposition of RW-2 cannot be taken as a proof as he was indebted to the respondent-wife's parents and therefore gave adverse statement against the appellant-husband under their influence.

30. There is however no proof on record to substantiate the above rebuttal of the appellant-husband regarding the R.W.2's indebtedness to the parents of the respondent-wife.

31. We have considered rival submissions, pleadings, counters, documents, evidence and depositions on record. We have also thought over the issues arising out of the facts and circumstances of the present case.

32. The question is whether the respective orders of the Family Court are sustainable or not in the facts and circumstances of the case and whether the reasoning recorded by the learned Judge of the Family Court while passing the respective orders can be faulted as asserted on behalf of the appellant-husband or sustained as asserted on behalf of the respondent-wife in these two appeals.

33. After perusing the pleading and the deposition the following facts emerges:-

- i) The marriage was solemnized between the parties on 09.10.2008 in Red Hills, Chennai as per the hindu customary rites in the presence of the elders.
- ii) After the marriage, the parties lived together in the respondent-wife's parents house

and later two children were born to them.

iv) After marriage was solemnized the appellant husband consented to live in the respondent-wife parent's house only due to space constraints in his parents house for the couples to start their matrimonial house;

v) That the appellant-husband has not contributed monetarily for the maintenance of the respondent-wife and the children;

vi) That the couple did not move to any independent house as averred in the petition to the appellant's husband.

vii) There is no truth in the allegation that the respondent-wife along with the children deserted the appellant-husband during January, 2014.

viii) On the contrary, it is the appellant-husband who has left the respondent-wife and the children on 17.03.2014 and got himself admitted in hospital;

ix) While strings of rival criminal proceedings were pending, the appellant-husband filed a petition under Section 9 of the said Act and thereafter, a petition under Section 24 of the Hindu Marriage Act, 1955 by the respondent-wife.

x) That the appellant-husband has neither seen the respondent-wife nor the children thereafter;

xi) Surrounding facts and circumstances also indicate that the appellant-husband was in the habit of drinking alcohol and that there was constant disharmony between the parties herein in the matrimonial home at his in-laws house

34. The allegation that the appellant-husband assaulted the respondent-wife and was cruel to her leading to her lodging criminal complaint against him cannot be straight away brushed aside. We also cannot ignore testimony of the maternal uncle of the appellant-husband. He has given a clear statement that the appellant-husband had all bad habits and the marriage was agreed and solemnized between the appellant-husband and the respondent-wife without disclosing his way of living and habits and that the respondent-wife was cheated into the marriage with the appellant-husband.

35. Further, the sequence of the events prior to the filing of cases before the Family Court under Section 9 and Section 24 of the Act cannot be ignored.

36. We find that the appellant-husband has filed the proceeding under Section 9 of the Act without any sincerity. The existence of rival criminal complaints between the parties and

the fact that the relationship was strained and that the parties have lived together only intermittently and after March, 2014 have lived apart cannot be ignored.

37. Rival criminal complaints also indicates that the relationship is not congenial and the situation is not conducive for the respondent-wife to join the appellant-husband.

38. If the appellant-husband wishes the respondent -wife to join him, he should take the assistance of marriage counsellors and elders and inspire confidence in the mind of the respondent-wife and the children. He should start contributing monetarily to his wife and try to slowly bridge the gap. Therefore, before he does these deeds, he cannot aspire for the relief he seeks for

39. As things stand, there are no material on record to find fault with the conduct of the respondent wife to force her to join the appellant-husband.

40. We also concur with the views expressed by the learned Judge of the Family Court that it is not sufficient for the appellant-husband to merely express his willingness to live with his wife without developing any of the qualities required to lead a conducive matrimonial life.

41. In the light of the above C.M.A No.118/2018 deserves to be dismissed and is hereby dismissed with cost.

42. The wife is living with her aged parents and is dependant on them. The wife and children are being taken care by the wife's parents with no contributions from the husband. Even as per the husband, he was not successful in his attempt to give money to the wife.

43. The appellant-husband is duty bound to maintain the respondent-wife and children and cannot neglect them. Further, the appellant-husband has income while the respondent-wife has no income of her own and has to be support the two children. Even as per the admission he has not contributed monetarily during the pendency of the proceeding. They deserved maintenance.

44. The order of the learned Judge of the Family Court is well reasoned and the assessment of the amount awarded towards maintenance is equitable as per the requirement of Section 24 of the Act. The Learned Judge has ordered only 50% of the admitted amount of monthly income by the husband which is appears reasonable under the circumstances.

45. We are therefore not inclined to interfere with the order dated 14.11.2014 of the learned Judge of the Family Court in I.A.No.1248 of 2017 in H.M.O.P No.1967 of 2014.

46. Therefore, C.M.A No.152 of 2018 also deserves to be dismissed with cost and is hereby dismissed with cost. Consequently, connected miscellaneous petition is closed.

47. In the result both the Civil Miscellaneous Appeals dismissed with cost.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

kkd

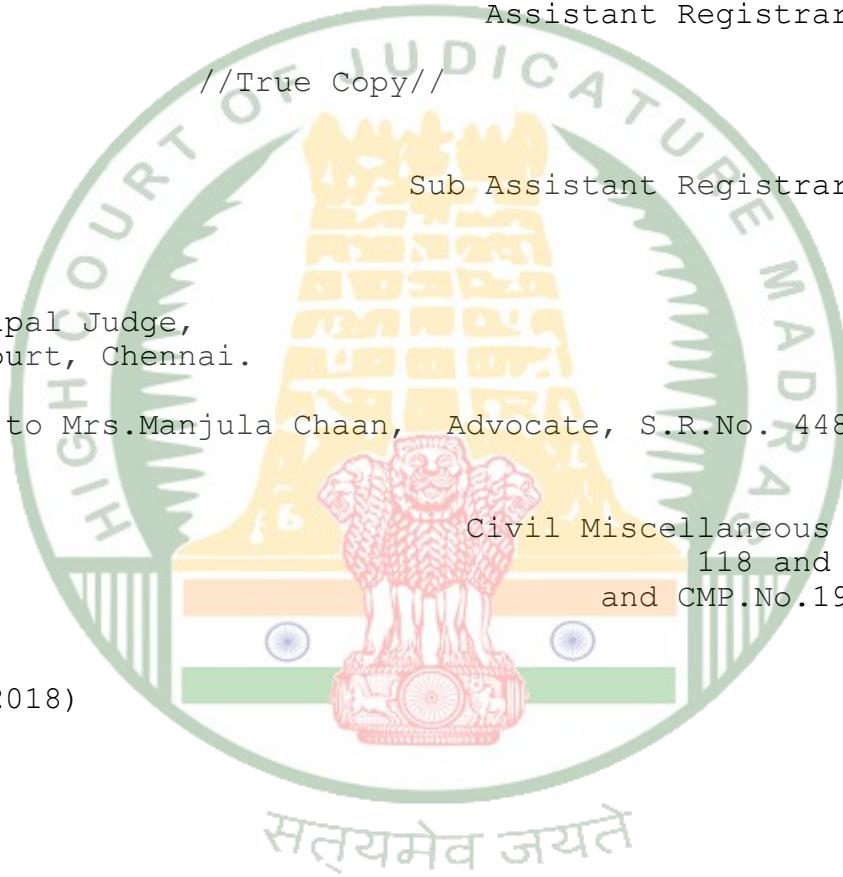
To

The Principal Judge,
Family Court, Chennai.

+2cc to Mrs.Manjula Chaan, Advocate, S.R.No. 44843

Judgment in
Civil Miscellaneous Appeal Nos.
118 and 152 of 2018
and CMP.No.1903 of 2018

AK(CO)
TR(13/08/2018)



WEB COPY