

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE R. SUBBIAH

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No.1222 of 2018 and
C.M.P.No.9937 of 2018

M. Kumaran

...Respondent/Respondent/ Appellant

Vs.

P. Nandhini Devi

...Petitioner/Petitioner/ Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1955 against the fair and decretal order dated 24.08.2017 made in I.A.No.1715 of 2016 in O.P.No.4481 of 2013 on the file of the V Additional Family Court, Chennai.

For Appellant : Mr.U. Karunakaran
For Respondent : Mr.T.Kokilavane

J U D G M E N T

C.SARAVANAN, J

The appellant is the husband and the respondent is the wife. Aggrieved by the impugned fair and decretal order dated 24.08.2017 passed by the V Additional Family Court, Chennai in I.A.No.1715 of 2016 in O.P.No.4481 of 2013, the present appeal has been filed by the appellant/husband.

2. The appellant and the respondent have filed separate petition to dissolve the marriage.

3. Earlier, the appellant-husband had filed O.P.No.3755 of 2014 to dissolve the marriage under Section 13 (1)(i), (i-a), (i-b)(ii) of the Hindu Marriage Act, 1955 before the Sub Court at

Poonamallee. Later the respondent-wife also filed O.P.No.4481 of 2013 to dissolve the marriage under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. These two divorce petitions are pending on the date of this appeal before the Family Court.

4. The respondent-wife filed I.A.No.1715 of 2016 in O.P.No.4481 of 2013 for an interim maintenance of Rs.25,000/- p.m. for herself and the child born to the appellant and the respondent under Section 24 of the Hindu Marriage Act, 1955 .

5. The appellant had pleaded in the counter to I.A.No.1715 of 2016 that he was jobless and therefore cannot be saddled with the liability to pay maintenance to the respondent.

6. The Family Court after perusing the pleading and evidence on record has awarded a sum of Rs.10,000/- as interim maintenance payable to the respondent-wife and a sum of Rs.5,000/- as interim maintenance payable for the minor child on monthly basis.

7. While awarding the interim maintenance, the Family Court has considered the fact that since the appellant-husband had capacity to borrow money to repay home loan and therefore had sufficient means to maintain the respondent and the child.

8. The Family Court has therefore ordered payment of the aforesaid sum of Rs.15,000/- to be paid for the maintenance to the respondent and their minor child.

9. Aggrieved by the impugned order of the Family Court, the appellant-husband is in appeal before this Court and seeks to assail the same on the ground that the respondent-wife was employed and was earning a sum of Rs.16,000/- p.m. at the time when the impugned order was passed.

10. During the course of hearing it was mentioned that while the respondent-wife was employed in M/s.Volante Software Private Limited and earning a sum of Rs.16,000/- p.m. while the appellant was not employed. The learned counsel appearing for the respondent mentioned that there is arrears as on date on the amount awarded.

11. We have considered the rival submissions made by the respective counsels for the appellant and respondent. We are of the view that the learned V Additional Principal Judge erred in awarding a sum of Rs.10,000/- to the respondent contrary to the mandate of Section 24 of The Hindu Marriage Act, 1955. Section 24 of the Act reads as under:-

Sec.24. Maintenance pendente lite and expenses of proceedings. Wherein 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 proceed, 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.

12. It is clear that the party seeking interim maintenance should have neither sufficient income to support himself or herself nor to meet necessary expenses for the litigation. It is under these circumstances having regard to the income of the respective parties, interim maintenance is awarded by the Courts.

13. In this regard, it is relevant to refer to the Judgment of the Division Bench of this Court in Mrs.Savithri Selvakumar vs. Dr.S.Selvakumar in CMA.No.1213 of 2016, dated 22.09.2017. Para 14 reads as under:

" 14. 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."

14. The ruling of the Court is clear that 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 the wife is admittedly employed and was earning a sum of Rs.16,000/- p.m.

15. Therefore, the respondent/wife ought not to have been given an interim maintenance of Rs.10,000/- p.m. At the same time, the learned V Additional Judge, Family Court has awarded only a meagre sum of Rs.5,000/-p.m. for their minor son. Hence, the said amount is enhanced to Rs.8,000/-p.m.

16. Under these circumstances, the amount of Rs.10,000/-p.m. awarded for the maintenance of the respondent is set aside. At the same time, the amount of Rs.5,000/-p.m. awarded for the maintenance of the minor son is enhanced to Rs.8,000/-p.m. and accordingly the impugned order is modified as under.-

(i) An amount of Rs.10,000/-p.m. awarded for the interim maintenance of the respondent-wife is set aside.

ii) The amount of Rs.5,000/-p.m awarded to their minor son payable to the respondent is enhanced to Rs.8,000/-.

iii) Litigation expenses awarded to the respondent is set aside.

iv) The appellant is directed to pay the arrears of interim maintenance of Rs.8,000/- p.m. together with interest calculated at 7.5% from the date of I.A.No.1715 of 2016 till the date of payment within a period of 15 days from the date of this order without further delay.

v) The appellant shall also pay the aforesaid interim maintenance of the minor son by the 15th day of every English calendar month to the respondent for the succeeding period without deviation.

17. Since H.M.O.P.No.4481 of 2013 along with miscellaneous petition and H.M.O.P.No.3755 of 2014 are pending, we deem it fit to direct the learned V Additional Judge, Family Court, Chennai to take up the case and complete the proceeding latest by 31st January, 2019.

18. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd

To

The V Additional Principal Judge,
Family Court, Chennai.

+1cc to Mr.U.Karunakaran, Advocate, S.R.No.44640

C.M.A.No.1222 of 2018
and CMP.No.9937 of 2018

PVS (CO)
GSP (17/09/2018)



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