

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.08.2018

Pronounced on : 09-08-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal Nos. 1354 and 1355 of 2018

Ashok Subramaniam .. Appellant /Both CMA

Versus

C. Srividhya .. Respondent/Both CMA

CMA No. 1354 of 2018:- Appeal filed under Section 19 of The Family Court Act against the Fair and Decreetal Order dated 17.11.2017 passed in I.A. No. 781 of 2015 in O.P. No. 2812 of 2013 on the file of VII Additional Principal Judge, Family Court, Chennai

CMA No. 1355 of 2018:- Appeal filed under Section 19 of The Family Court Act against the Fair and Decreetal Order dated 17.11.2017 passed in I.A. No. 780 of 2015 in O.P. No. 2812 of 2013 on the file of VII Additional Principal Judge, Family Court, Chennai

For Appellant : Mr. Ashok Menon
in both the appeals

For Respondent : Mrs. K. Sumathi
in both the appeals

COMMON JUDGMENT

R. Subbiah, J

Both these appeals are filed by the appellant questioning the correctness and validity of the common order dated 17.11.2017 passed by the learned VII Additional Principal Judge, Chennai in I.A. No. 780 and 781 of 2015 in OP No. 2812 of 2013.

2. CMA No. 1354 of 2018 is filed as against the order dated 17.11.2017 passed in I.A. No. 781 of 2015 in OP No. 2812

of 2013. The said I.A. No. 781 of 2015 was filed by the respondent herein under Section 24 of The Hindu Marriage Act praying to direct the appellant herein to pay a sum of Rs.30,000/- per month as maintenance to her and Rs.1,00,000/- towards litigation expenses. The Family Court refused to direct the appellant to pay any maintenance to her, however directed the appellant to pay a sum of Rs.20,000/- towards litigation expenses to the respondent.

3. C.M.A. No. 1355 of 2018 is filed as against the Order dated 17.11.2017 passed in I.A. No. 780 of 2015 in OP No. 2812 of 2012, which was filed by the respondent herein under Section 26 of The Hindu Marriage Act to direct the appellant herein to pay Rs.30,000/- per month to the minor son as maintenance and towards educational expenses. The Family Court directed the appellant herein to pay a sum of Rs.25,000/- per month towards maintenance of the minor son and also to meet his educational and medical expenses as and when required.

4. As both the appeals arise out of a common order dated 17.11.2017 passed by the Family Court, they are taken up for hearing together and disposed of by this common Judgment.

5. The marriage between the appellant and the respondent was solemnised on 04.02.2005 at Gandhimathi Kalyana Mandapam, No.11, Second Street, North Boag Road, T. Nagar, Chennai - 600 017 as per Hindu rites and customs. The marriage was a love marriage and it was accepted by the parents of both sides. Due to the wedlock between the appellant and the respondent, a Male Child was born on 18.03.2009 who was named as Dyutidher Ashok. Since misunderstanding cropped up between the couple, it led to frequent quarrel between them. While so, during March 2012, the respondent left the matrimonial company of the appellant along with the minor son and stayed in her parents house. The appellant waited for a year with the hope that the respondent would return to the matrimonial home and in spite of many efforts made by the appellant through his relatives and common friends there was no sign of the respondent returning to the matrimonial home. In such circumstances, left with no other alternative, the appellant has filed HMOP No. 2812 of 2013 under Section 9 of The Hindu Marriage Act for restitution of conjugal rights.

6. On notice, the respondent filed a counter affidavit in OP No. 2812 of 2013 repudiating all the averments made therein.

7. Pending OP No. 2812 of 2013, the respondent filed I.A. No. 780 of 2015 under Section 26 of The Hindu Marriage Act praying to direct the appellant herein to pay a sum of Rs.30,000/- per month towards maintenance and educational expenses of the minor son. That apart, the respondent has also

filed I.A. No. 781 of 2015 under Section 24 of The Hindu Marriage Act praying to direct the appellant herein to pay a sum of Rs.30,000/- per month towards her maintenance besides Rs.1,00,000/- towards litigation expenses.

8. In the affidavit filed in support of I.A. Nos. 780 and 781 of 2015, it was contended by the respondent that the appellant is working as Application Manager in RSS Technologies and earning Rs.16,00,000/- per annum and therefore, as a father, he is bound to pay maintenance to the minor son that apart she is also entitled for maintenance. It was further stated that the respondent is also employed at Temenos and drawing a monthly salary of Rs.58,000/-. According to the respondent, her father is aged 67 years, a pensioner and the pension amount that her father receives is just and sufficient to meet his own medical expenses. Further, mother of the respondent is also a pensioner and with the pension amount, she is looking after her medical expenses. It was further stated that the marriage of her sister was celebrated on 20.11.2014 for which her parents have drained out their entire savings amount besides they have obtained loan. As the respondent had taken asylum in her parents house, she is paying a sum of Rs.18,000/- per month as rent since she cannot afford to live separately with the minor son. After paying Rs.18,000/- towards rent, the respondent is left with only Rs.40,000/- which is grossly insufficient to maintain herself and the minor son. On the other hand, the appellant is earning Rs.1,45,000/- per month, his parents have their own independent house and they are also drawing pension. The younger sister of the appellant was given in marriage even during the year 2006 and therefore the appellant has no commitments to be met as on date. The respondent is living separately with the minor son since April 2012 and she finds it difficult to maintain herself and the minor son. It is specifically contended that the appellant is earning three times higher than the respondent and therefore the respondent has a right to lead a life on par with the status of the appellant. The respondent also would contend that during her stay in the matrimonial home, the appellant cleverly extracted a sum of Rs.17,208,71/- from her and she has also filed a petition for return of the said amount and that the respondent is in possession of records for having paid the sum of Rs.17,208,71/- to the appellant. It is also contended that since the respondent is staying along with her parents she has no sufficient means to maintain herself and the minor child, especially to meet the educational and medical expenses of the minor child. In such circumstance, the respondent prayed for allowing the applications as prayed for.

9. The applications filed by the respondent were resisted by the appellant by filing a common counter affidavit contending

inter alia that the averment that he is drawing a sum of Rs.16 lakhs per annum is incorrect. The averment that the father of the respondent is a pensioner and his pension amount is just and sufficient to meet his medical expenses is not correct. Even as admitted by the respondent, the mother of the respondent is also a pensioner and drawing pension. The averment that the father and mother of the respondent have spent their entire savings money besides the hand loan availed for performance of the marriage of the respondent's sister on 20.11.2014 is incorrect. According to the appellant, the respondent is earning Rs.58,000/- per month, on the other hand, he is drawing only a sum of Rs.75,000/- and not Rs.1,45,000/- as alleged by the respondent. The respondent is a holder of B.E., and M.B.A., Degree and she has the prospects of getting most lucrative and well paid employment in future. Above all, the respondent has a own house in Bangalore and she is in receipt of rental income every month, but this was suppressed by her in the affidavit filed in support of the petitions. The father of the respondent retired as a Gazetted Officer from Industrial Department, Government of Tamil Nadu and he is in receipt of Rs.25,000/- per month as pension. Further, the mother of the respondent retired as a Joint Secretary from the Government of Tamil Nadu and she is in receipt of Rs.45,000/- per month as pension. The respondent's only sister is employed as a Software Engineer in TCS and drawing substantial salary while her husband is working in a reputed company. The father of the respondent has two houses of his own. On the other hand, the mother of the appellant is a house wife and his father is getting a fixed pension as a retired Bank employee. According to the appellant, he had availed housing loan for which deductions are being made from his salary month after month. The respondent is well employed and is in receipt of a handsome salary, while so, the question of paying maintenance to her will not arise. At the same time, the appellant has stated that he is ready and willing to bear the educational and medical expenses of the minor child.

10. Before the Family Court, both the appellant and the respondent did not examine any witness. The respondent did not produce any documentary evidence, but the appellant marked his salary certificate as Ex.R1. The Family Court, taking into account the rival pleadings as well as the submissions made on behalf of both sides, concluded that both the appellant and the respondent are earning sufficient salary. Further, the Family Court rendered a specific finding that having regard to the status of the parties, the appellant is bound to pay maintenance to the minor son. Accordingly, the Family Court allowed both the applications as indicated above.

11. Mr. Ashok Menon, learned counsel for the appellant would only contend that it is not the case of the respondent

that she is not resourceful enough to lead a normal life in the absence of any amount paid towards maintenance by the appellant. Admittedly, the respondent is also employed and earning a fanciful salary month after month. While so, the applications filed by her praying to direct the appellant to pay her maintenance for her livelihood is unreasonable and the Family Court ought not to have entertained the applications filed by her. The learned counsel for the appellant therefore prayed for allowing the appeals.

12. Per contra, Mrs. Sumathi, learned counsel for the respondent/wife would contend that the appellant is getting higher salary than that of the respondent and therefore, the status of the respondent has to be elevated on par with that of the appellant by directing the appellant to pay maintenance to her. In this context, reliance was placed on the Judgment of the Honourable Supreme Court in the case of (Smt. Jasbir Kaur Schgal vs. The District Judge, Dehradun) reported in CDJ 1997 SC 280 to contend that while granting maintenance, the Courts have to consider the status of the parties, their respective needs, capacity of the husband to pay, having regard to his reasonable expenses for his own maintenance and those he is obliged under Law and statutory but involuntary payments or deductions. Further, amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. By placing reliance on the above decision of the Honourable Supreme Court, the learned Counsel for the respondent would contend that the Court below, taking note of the status of the appellant and respondent and the need of the respondent, has only awarded a reasonable amount of Rs.25,000/- as interim maintenance for the minor son and Rs.10,000/- as litigation expenses and it calls for no interference by this Court. The learned counsel for the respondent therefore prayed for dismissal of the appeals.

13. We have heard the learned counsel for the appellant as well as the respondent and perused the materials placed on record. Admittedly, in this case, the respondent is employed and earning a sum of Rs.58,000/- per month and therefore, she is resourceful enough and had the wherewithal to maintain herself. When the respondent is employed and is in receipt of a handsome salary, month after month, it cannot be gainsaid that she finds it difficult to maintain herself or the minor son warranting the appellant/husband to pay maintenance to her. 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."

14. The object of granting pendente lite maintenance to the wife is not to elevate her status on par with the husband, but to add financial support for her livelihood or her survival, to meet her basic needs, till the disposal of the matrimonial proceedings. In this context, we deem it appropriate to refer to Section 24 of the Hindu Marriage Act, which 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.”

15. 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.

16. In the present case, even as per the admission of the respondent, she is earning Rs.58,000/- per month. Further, in the counter affidavit filed by the appellant, reference was made about the receipt of pension by the parents of the respondent and in particular the property owned by the respondent at Bangalore and the rental income received thereof. However, such averments made by the appellant in the counter affidavit have not been disputed by the respondent by filing a reply statement. Further, in the affidavit filed by the respondent in support of the petition filed under Section 24 of the Hindu Marriage Act, she has not made any averment to the effect that she is not resourceful enough to maintain herself or she finds it difficult to maintain herself or she has no independent income to support herself. What she pleaded is that her salary is lesser than the salary received by the appellant and therefore, if maintenance amount is awarded, her financial resourcefulness would match the status of the appellant/husband. Therefore, it is clear that the respondent is having independent income to support herself and in such event, her claim for interim maintenance need not be considered. The Family Court directed the appellant to pay interim maintenance on an erroneous reasoning that the earning of the respondent is half of the amount earned by the appellant and therefore she is entitled for maintenance. We are not in a position to accept such a reasoning assigned by the Family Court for awarding interim maintenance in favour of the respondent. Such a reasoning assigned by the Family Court is not in accordance with Section 24 of The Hindu Marriage Act. As stated earlier, 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 under

Section 25 of The Hindu Marriage Act and it is not a criteria for matching the financial status of the wife or husband as the case may be while deciding the pendente lite maintenance amount under Section 24 of The Hindu Marriage Act. In the present case, admittedly, the respondent sought for maintenance only to match her status with that of the financial status of the appellant, which is legally impermissible. The evidence on record clearly show that the respondent is employed and she is in a position to maintain herself and therefore she is not entitled for maintenance from the appellant.

17. The decision of the Honourable Supreme Court in the case of (Smt. Jasbir Kaur Schgal vs. The District Judge, Dehradun) reported in CDJ 1997 SC 280 relied on by the learned counsel for the respondent/wife is factually distinguishable. In that case, the Honourable Supreme Court has noted that the wife is living with her elder daughter and she has no sufficient income or a shelter for her. On the other hand, it was noted that the husband therein is financially capable of paying maintenance and therefore, taking note of the status of the appellant, the maintenance amount was enhanced by the Honourable Supreme Court. In the present case, as we have already held, the respondent is financially resourceful enough and she is in a position to maintain herself through her employment and salary received thereof. Therefore, we hold that the Court below ought not to have directed the appellant to pay one time litigation expenses to the respondent at Rs.20,000/-. We also take note of the fact that as against the order passed by the Family Court in I.A. No. 781 of 2015 in OP No. 2812 of 2013 refusing to direct the appellant to pay maintenance to the respondent, she has not filed any appeal.

18. At the same time, we feel that the appellant, being a father of the minor child, is having a pious obligation to maintain his minor son. In such circumstances, we hold that the sum of Rs.25,000/- awarded by the Court below is to be reduced to Rs.15,000/- per month, which the appellant is bound to pay towards the maintenance of the minor child every month. Further, the educational expenses as well as medical expenses of the minor son has to be shared equally by the appellant and the respondent at actuals inasmuch as the respondent is also employed and earning amount.

19. In the result,

(i) C.M.A. No. 1354 of 2018 is allowed by setting aside the order dated 17.11.2017 passed in I.A. No. 781 of 2015 in OP No. 2812 of 2013

(ii) C.M.A. No. 1355 of 2018 filed by the appellant is partly allowed directing the appellant to pay a sum of Rs.15,000/- per month towards maintenance of the minor son. We

also direct that both the appellant and the respondent shall share the educational expenses as well as the medical expenses of the minor at actuals, as and when required. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

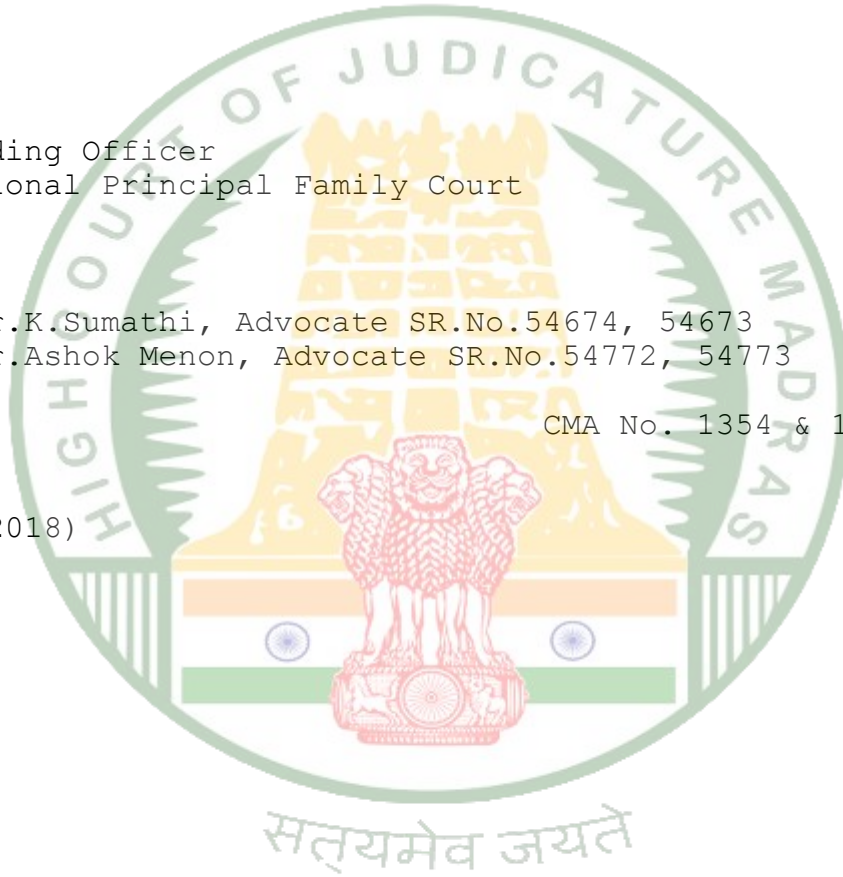
The Presiding Officer
VII Additional Principal Family Court
Chennai

+2cc to Mr.K.Sumathi, Advocate SR.No.54674, 54673

+4cc to Mr.Ashok Menon, Advocate SR.No.54772, 54773

CMA No. 1354 & 1355 of 2018

RK(CO)
GN(29/08/2018)



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