

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-08-2018

CORAM:

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

Civil Miscellaneous Appeal No. 1530 and 1589 of 2018

C.M.A. No. 1530 of 2018

V.J. Malini ... Appellant

Versus

P. Manoharan ... Respondent

C.M.A. No. 1589 of 2018

P. Manoharan ... Appellant

Versus

V.J. Malini ... Respondent

CMA No. 1530 of 2018:- Appeal filed under Section 19 of the Family Courts Act, 1984 against the Fair and Decreetal Order dated 14.11.2017 passed in I.A. No. 681 of 2017 in H.M.O.P. No. 89 of 2017 on the file of IV Additional Family Court, Chennai

CMA No. 1589 of 2018:- Appeal filed under Section 19 of the Family Courts Act, 1984 against the Fair and Decreetal Order dated 14.11.2017 passed in I.A. No. 682 of 2017 in H.M.O.P. No. 89 of 2017 on the file of IV Additional Family Court, Chennai

C.M.A. No. 1530 of 2018

For Appellant : Mr. B. Thilak Narayanan
For Respondent : Mr. K. Kannan

C.M.A. No. 1589 of 2018

For Appellant : Mr. K. Kannan
For Respondent : Mr. B. Thilak Narayanan

COMMON JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

C.M.A. No. 1530 of 2018 has been filed by the wife not being satisfied with the quantum of pendente lite maintenance awarded by the Family Court in the order dated 14.11.2017 passed in I.A. No. 681 of 2017 in H.M.O.P. No. 89 of 2017.

2. The husband has filed C.M.A. No. 1589 of 2018 aggrieved by the order dated 14.11.2017 passed in I.A. No. 681 of 2017 in H.M.O.P. No. 89 of 2017 whereby the Family Court directed him to pay a sum of Rs.5,000/- per month as maintenance to the wife together with a sum of Rs.10,000/- towards litigation expenses.

3. For the sake of convenience, the parties to these appeals shall be referred to as per their litigative status in C.M.A. No. 1530 of 2018 filed by the wife, as appellant and respondent.

4. The marriage between the appellant and the respondent was solemnised on 15.04.2013 at Kamavar Chouthry, Purasawalkam, Chennai as per Hindu rites and customs. After the marriage, the appellant and the respondent commenced their matrimonial journey at the house of the respondent at Sriharikota, Andhra Pradesh. The respondent was employed as Canteen Supervisor at ISRO, Sriharikota Andhra Pradesh. Soon after the marriage, there was misunderstanding between the couple which led to the respondent filing H.M.O.P. No. 2077 of 2016 before the Family Court, Chennai under Section 13 (1) (b) of The Hindu Marriage Act on the ground of desertion. On notice, the appellant has filed a counter affidavit and opposed the Petition for dissolution of the marriage. On the other hand, the appellant herself filed H.M.O.P. No. 89 of 2017 under Section 13 (1) (i-a) (i-b) and Section 25 of The Hindu Marriage Act for dissolution of the marriage on the ground of cruelty and desertion.

5. During the pendency of HMOP No. 2077 of 2016 and HMOP No. 89 of 2017, the appellant has filed I.A. No. 680 of 2017 contending that before the marriage, on 20.02.2013, an engagement ceremony was performed at Balaji Hall, Perambur, Chennai for which the mother and brother of the appellant have spent a sum of Rs.54,500/-. Further, on 15.04.2013, the marriage between the appellant and the respondent was solemnised at Kamavar Chouthry, Purasawalkam, Chennai and at the time of marriage, the mother of the appellant had presented 25 sovereigns of gold jewel, silver articles, kitchen utensils and other house hold articles besides that the marriage expenses to the tune of Rs.8 lakhs was spent by her mother and brother. After marriage, the appellant as well as the respondent commenced their matrimonial journey in the house of the respondent at Sriharikota, Andhra Pradesh. The respondent was

earlier working in Dubai in a catering industry and he owns immovable properties in Ambattur and Oragadam. Subsequently, the respondent came to India and employed as a Canteen Supervisor at ISRO, Sriharikota, Andhra Pradesh. After marriage, the appellant and the respondent lived happily for a few days. Ten days after the marriage, sister and father of the respondent came to the matrimonial home and at that time, there was a quarrel between the respondent, his father and sister with respect to sharing of the family property. When the appellant attempted to pacify the respondent not to quarrel with his own father and sister, he turned his ire towards the appellant and demanded for partitioning the property belonged to her father. When the appellant informed the respondent that even during his life time, her father had settled the property in favour of her brother, he demanded for a share from such property from her brother. When the appellant expressed her inability to make such demand with her brother, the respondent scolded and abused the appellant in filthy language. In fact, the respondent persistently made a demand for a share in the property settled by the father of the appellant in favour of the brother of the appellant, which resulted in frequent quarrel. According to the appellant, the respondent is addicted to alcoholic drinks and under the influence of alcohol, he regularly abused and ill treated the appellant by demanding to get a share in the property which her father settled in favour of her brother. It is further stated that during December 2013, when the father of the respondent fell sick, the appellant went to the hospital at Chennai and looked after him. While so, the respondent asked the appellant to pack her dress and take the jewels as she might be required to stay in Chennai for some time. Believing the same, on 10.12.2013, the appellant packed her dress and took 12.5 sovereign of jewels in her purse along with luggage and reached chennai. After reaching Chennai, to her dismay, the gold jewels which she kept in the purse were missing and immediately he contacted the respondent to search for the missing jewels in the house. However, the respondent informed the appellant that she might have missed the jewels at Chennai and that the jewels are not available in the matrimonial home. Further, the respondent also prevented the appellant from giving any complaint to the police station regarding the missing of the jewels. On 03.05.2014, the appellant and the respondent went to Tirupathi and during their stay at Tirupathi, the respondent received a call from his sister and a wordy quarrel took place between the respondent and his sister over phone. When it was questioned by the appellant, the respondent turned his ire towards her and started beating her mercilessly. In the impact, the appellant sustained bleeding injuries. In this connection, there was a wordy quarrel emanated between the appellant and the respondent and at that time, the respondent confessed that he is in possession of the 12.5 sovereigns of jewels which went

missing earlier and he will not return it to her if the appellant disclosed the incident took place at Tirupati to any one. Thereafter, the appellant left to Chennai and stayed in her parents house. Several mediations have taken place for reunion between the appellant and the respondent but no fruitful solution could be reached. In such circumstances, the appellant received notice in HMOP No. 2077 of 2016 filed by the respondent for dissolution of the marriage.

6. According to the appellant, she is unemployed and she has no means for her livelihood. On the other hand, the respondent is employed as Canteen Supervisor at ISRO and earning a sum of Rs.50,000/- as salary every month. There are no children born out of the wedlock. The respondent is staying alone in the matrimonial home and he need not spend any amount for maintenance of any one. The father of the respondent is also financially well placed and he is also not depending upon the respondent. The respondent is staying in Sriharikota in the staff quarters provided by his employer for a meagre rent. Therefore, the appellant filed I.A. No. 680 of 2017 praying for a direction to the respondent to pay a sum of Rs.20,000/- per month towards pendente lite maintenance to her.

7. The respondent filed a counter affidavit in I.A. No. 680 of 2017 contending that the appellant is a Graduate with a Diploma in Computer Application and she was working prior to the marriage. The appellant is having independent income sufficient to maintain herself and therefore, he prayed for dismissal of the application.

8. Before the Family Court, the appellant as well as the respondent did not let in any oral or documentary evidence. The Family Court, on considering the facts and circumstance of the case and the arguments advanced by the respective counsel, concluded that the respondent is working as Canteen Supervisor and even according to the respondent, he is earning Rs.30,000/- per month as salary. Therefore, the Family Court directed the respondent to pay a sum of Rs.5,000/- towards monthly maintenance and a sum of Rs.10,000/- as litigation expenses.

9. The learned counsel for the appellant would contend that the respondent is free from any commitment and the salary which he receives is being spent by him to lead a wayward life. On the other hand, the appellant is struggling to maintain herself and she had taken shelter in her brother's house. The appellant is seeking the help and assistance of her brother even for her petty expenses. While so, the Family Court ought to have awarded a sum of Rs.20,000/- per month as maintenance as prayed for by the appellant instead of awarding a sum of Rs.5,000/- per month. The sum of Rs.5,000/- per month awarded is

grossly insufficient for the appellant to maintain herself in the present day cost of living and therefore, the learned counsel for the appellant prayed for allowing the appeal filed by the appellant in C.M.A. No. 1530 of 2018.

10. The learned counsel for the respondent would contend that the father of the respondent is aged and suffering from cardiac ailment and it is the respondent who is looking after him at his advanced age. The respondent is bound to take care of his father at the time of his ailment and the salary he receive is being spent for the medical expenses of his father. Further, the income earned by the respondent is just and sufficient to meet his personal commitments and therefore, the learned counsel for the respondent prayed for allowing C.M.A. No. 1589 of 2018 as prayed for.

11. We have heard the counsel for both sides and perused the materials placed on record. Admittedly, the appellant, in the affidavit filed in support of I.A. No. 680 of 2017, has stated that she is unemployed, she has no means to survive and she is depending on her brother and mother to meet her day to day expenses. This averment of the appellant was not denied by the respondent. Further, the respondent is employed as Canteen Supervisor in ISRO, Sriharikota and even according to the respondent, he is earning a sum of Rs.30,000/- per month. Therefore, the obligation of the respondent to maintain the appellant during the pendency of matrimonial proceedings is not only legal but also moral. When the appellant is not employed gainfully and she is unable to maintain herself, 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. The Family Court, taking note of the above settled legal position, has directed the respondent to pay Rs.5,000/- per month towards maintenance. However, considering the prevailing cost of living, we feel that the sum of Rs.5,000/- awarded by the Family Court may not be sufficient for the appellant to maintain herself. Having regard to the above, we feel that the sum of Rs.5,000/- per month awarded by the Family Court has to be enhanced to Rs.7,500/- per month which would meet the ends of justice.

12. Accordingly, we modify the Order dated 14.11.2017 passed in I.A. No. 681 of 2017 in H.M.O.P. No. 89 of 2017 on the file of IV Additional Family Court, Chennai by directing the husband/respondent to pay to the wife/appellant, a sum of Rs.7,500/- per month towards pendente lite maintenance, as against the sum of Rs.5,000/- awarded by the Family Court. Resultantly, C.M.A. No. 1530 of 2018 filed by the wife/appellant is allowed and C.M.A. No. 1589 of 2018 filed by the husband/respondent is dismissed. No costs. Consequently, CMP Nos. 12216 and 12592 of 2018 are closed.

13. Taking into account the over all facts and circumstance of the case, we direct the IV Additional Family Court, Chennai to take up HMOP No. 89 of 2017 filed by the husband/respondent and H.M.O.P. No. 2077 of 2016 filed by the wife/appellant and dispose of the Original Petitions on merits and in accordance with law on or before 28.02.2019.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer
IV Additional Family Court
Chennai

2.The Section Officer,
V.R.Section, High Court, Madras.

+2ccs to B.Thilak Narayanan, Advocate, sr.no.55289&55375

CMA No. 1530 & 1589/2018

AD(CO)
RMP (26/09/2018)

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