

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2018

Pronounced on : 08-06-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 1245 of 2014
and
M.P. No. 1 of 2014

Mahipal H. Jain ... Appellant

Versus

Veena M. Jain ... Respondent

Appeal filed under Order 41 Rule 1 of Code of Civil Procedure against the Order dated 07.01.2014 passed in I.A. No. 2250 of 2012 in O.P. No. 2616 of 2012 on the file of II Additional Judge, Family Court, Chennai.

For Appellant : Mr. R. Ganesh Kumar
for S. Shrenik Raj

For Respondent : Mrs. C. Shyamala

JUDGMENT

R. Subbiah, J

The appellant has come forward with this appeal questioning the correctness of the Order dated 07.01.2014 passed in I.A. No. 2250 of 2012 in O.P. No. 2616 of 2012 on the file of II Additional Judge, Family Court, Chennai. By the said order dated 07.01.2014, the Family Court directed the appellant to pay a sum of Rs.20,000/- per month to the respondent and the minor female child towards interim maintenance from 27.08.2012 till the disposal of the Original Petition and another sum of Rs.10,000/- towards one time litigation expenses.

2. The marriage between the appellant and the respondent was solemnised on 27.04.2008 at Kalu Malu Bhavan, Venkatachala Mudali Street, Choolai, Chennai - 600 012 as per Hindu rites and

customs. The marriage was arranged between the appellant and the respondent by the elders of both sides. After the marriage, the appellant and the respondent resided at the house of the appellant as a joint family. The matrimonial life between the appellant and the respondent was quite happy and that the appellant provided all comforts and luxuries to the respondent befitting his status. As the respondent was pregnant, in accordance with the prevailing custom, she was sent to her parents house for delivery of the child during July 2009 and on 22.10.2009, the respondent gave birth to a female child by name Yati. According to the appellant, after delivery of the female child, the respondent came back to the matrimonial home along with the female child during January 2010. However, after birth of the female child, the attitude and behaviour of the respondent had dramatically changed and the respondent did not allow the appellant to touch her or the female child and the appellant was forced to sleep separately. According to the appellant, the respondent started quarrelling with the appellant even for a trivial affair and that she insisted upon security and safety of herself and the new born child. According to the appellant, he suffered financial loss in the business carried on along with his father and that the respondent was under the impression that the appellant could not take care of her and the new born child financially. Even though the appellant assured the respondent that her interest will be protected, the respondent refused to heed to such assurances and started making false allegations against the appellant and his father by stating that they are worthless. The appellant and his family were shocked to note such a discourteous behaviour on the part of the respondent. In fact, the parents of the appellant have also given an option to take a separate house. However, by citing the lack of financial security for herself and the new born child, the respondent left the matrimonial home during June 2010 by stating that her parents have asked her to come back and she will lead a peaceful life in her parents house. The best efforts taken by the appellant to meet the respondent on the eve of marriage anniversary and on the birth date of the minor child resulted in humiliation at the hands of the respondent and her parents. According to the appellant, he was always ready and willing to live with the respondent and the efforts taken by him to rejoin the respondent went in vain. Therefore, he has filed O.P. No. 2616 of 2012 under Section 9 of The Hindu Marriage Act for restitution of conjugal rights.

3. The Original Petition was resisted by the respondent by filing a counter affidavit in which it was contended that the appellant and his father were in good financial capacity by running business, however, the appellant did not spend a single rupee during her pregnancy. Even for the medical check during her pregnancy, amount was spent only by the father of the

respondent. According to the respondent, during her pregnancy, the mother of the appellant insisted her to do all house hold job and the respondent was made to attend Poojas in the Jain temple nearby and forced to have food only there and return home. Thus, the respondent was made to go to the temple in the morning and afternoon hours also on several days. The respondent was specifically informed to have breakfast only after the morning pooja and similarly told to have lunch after the pooja in the temple, thereby she was subjected to harassment and humiliation. According to the respondent, after the birth of the child, she came back to the matrimonial home where the new born child was given massage with a baby oil which caused white patches in the body of the child. It is further complained in the counter affidavit that even for vaccinations of the new born child, the appellant did not pay any money and it was the father of the respondent who had borne all the medical expenses. According to the respondent, the entire earnings in the family business were maintained only by the father of the appellant and the appellant did not provide any financial support to her. Above all, the appellant and his family members demanded gold gifts for performance of marriage of the sisters of the appellant and when such demand could not be fulfilled by the parents of the respondent, the respondent was treated badly by the appellant and his parents. The respondent was subjected to humiliation and harassment during her stay in the matrimonial home. Due to matrimonial cruelty inflicted on her, the respondent went to her parents house for mental peace on 23.07.2010 but thereafter, the appellant did not call the respondent to join him in the matrimonial home.

4. Pending O.P. No. 2616 of 2012, the respondent has filed I.A. No. 2250 of 2012 in O.P. No. 2616 of 2012 under Section 24 of The Hindu Marriage Act seeking pendente lite maintenance. According to the respondent, she has no source of income and that she is depending upon her parents for day to day expenses. On the other hand, the appellant is doing business and earning substantially. Therefore, the respondent sought for a direction to the appellant to pay a sum of Rs.50,000/- per month as interim maintenance for her and the minor daughter and Rs.25,000/- towards litigation expenses pending disposal of the Original Petition.

5. The interim application filed by the respondent was resisted by the appellant by contending that the respondent left the matrimonial company of the appellant mainly on the ground that the appellant sustained loss in the business and he could not maintain her and the minor child financially. While so, in the interim application, it was stated as though the appellant is earning Rs.1,50,000/- per month from the business carried on by him. The appellant is only carrying on business on

commission basis by supplying goods to the dealers and earning a sum of Rs.10,000/- per month as commission. While giving the break-up of monthly expenses, the respondent has added a sum of Rs.15,570/- as monthly fees payable for the minor female child, while the fact remains that the said sum represents the school fees for the minor daughter for a whole year. The claim made by the respondent for payment of interim maintenance is exorbitant and onerous and therefore, the appellant prayed for dismissal of the petition.

6. Before the Family Court, on behalf of the appellant, Exs. R1 to R2, income tax returns for the period from 2012-2013 and 2013-2014 were marked. On behalf of the respondent, Exs. P1 to P4 were marked as documents. Both sides did not adduce any oral evidence. The Family Court, on consideration of the documentary evidence rendered a finding that the appellant has only filed income tax returns but did not produce any proof to show that he had incurred loss in the business carried on by him. The Family Court also concluded that the respondent has no independent source of income to maintain herself and therefore, the appellant, as her husband, is bound to maintain her and the minor child. Accordingly, the Family Court directed the appellant to pay a sum of Rs.20,000/- per month as interim maintenance together with a sum of Rs.10,000/- towards litigation expenses. It is this order passed by the Family Court, which is challenged in this Civil Miscellaneous Appeal by the appellant/husband.

7. The learned counsel appearing for the appellant would vehemently contend that the respondent deserted the matrimonial company of the appellant only on the ground that the business hitherto carried on by him along with his father plunged into loss and she apprehended that the appellant could not maintain her and the minor child financially. While so, in the application seeking pendente lite maintenance, the respondent made unsubstantiated averments as though the appellant was earning Rs.1,50,000/- per month without any documentary proof. The fact remains that the appellant himself is earning only a sum of Rs.10,000/- per month by supplying goods to the dealers on commission basis while so, the direction issued by the Family Court, directing the appellant to pay Rs.20,000/- per month towards monthly maintenance is unjust and unsustainable. The learned counsel for the appellant would further submit that the respondent is earning a reasonable amount by conducting tuition and dance class but she has suppressed this vital aspect before the Family Court. The appellant has filed the Original Petition only for restitution of conjugal rights and that the respondent has no intention to join the appellant in the matrimonial home mainly due to the reason that the appellant is not resourceful enough to maintain her. While so, the direction issued by the

Family Court, directing the appellant to pay a sum of Rs.20,000/- per month is uncalled for.

8. On the other hand, the learned counsel for the respondent would contend that the appellant is maintaining a bank account with Union Bank of India, Chennai and it was filed as Ex.P1 before the Family Court. A perusal of the financial transaction the appellant had in his bank account would indicate that he has substantial income through his business. The appellant is carrying on business in the name and style of Crystal Metal along with his father and that the appellant is financially capable of maintaining the respondent and the minor daughter. The Family Court, taking note of the documentary evidence made available, has rightly directed the appellant to pay interim maintenance to the respondent and it calls for no interference by this Court.

9. We have heard the counsel for both sides and perused the materials placed on record. Pending the Original Petition filed by the appellant for restitution of conjugal rights, the respondent has filed I.A. No. 2250 of 2012 in OP No. 2616 of 2012 under Section 24 of The Hindu Maintenance Act seeking pendente lite maintenance for her and the minor daughter. Before the Family Court, in order to prove the financial capability of the appellant, the respondent has filed Ex.P1, bank statement of the appellant with Union Bank of India, Chennai Branch which contain several financial transactions. Admittedly, the bank account stands in the name of the appellant herein and there is no reasons to disbelieve the same. It is not the case of the appellant that the respondent is gainfully employed anywhere and earning money. On the contrary, it was merely stated that the respondent is earning money by conducting tuition and dance class. Such an averment has not been substantiated by producing any material evidence. The fact remains that the appellant, being the husband of the respondent and father of the minor child has an obligation to maintain them during the pendency of the Original Petition filed by him for restitution of conjugal rights. Such an obligation on the part of the appellant is not only legal, but also moral. 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 as the case may be when there is no independent income to maintain himself or herself as the case may be during the pendency of matrimonial proceedings. Taking into account the above settled principle, we are of the view that the Family Court is wholly justified in directing the appellant to pay pendente lite maintenance to the respondent and the minor female child at the rate of Rs.20,000/-

per month. Above all, we find that the sum of Rs.20,000/- awarded by the Family Court cannot be said to be exorbitant especially when the respondent has to maintain herself and the minor female child.

10. For all the above reason, we confirm the Order dated 07.01.2014 passed in I.A. No. 2250 of 2012 in O.P. No. 2616 of 2012 on the file of II Additional Judge, Family Court, Chennai. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rsh

To

The II Additional Judge
Family Court, Chennai

Copy to

The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+2ccs to Mrs.C.Shyamala, Advocate, S.R.No.36123

+1cc to Mr.R.Ganesh Kumar, Sr.no.35906

CMA No. 1245 of 2014

mg(co)

cs/29/06/18

WEB COPY