

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2018

Pronounced on : 18.06.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal Nos.1678 and 3243 of 2017

and CMP.Nos.8999 of 2017 and 20197 of 2017

Deepa Rajendran ... Appellant in CMA.No.1678 of 2017
and respondent in CMA.No.3243 of 2017

Vs.

N.Unnikrishnan ... Respondent in CMA.No.1678 of 2017
and
Appellant in CMA.No.3243 of 2017

Prayer in CMA.No.1678 of 2017 :

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act to set aside the fair order and decretal order dated 13.07.2016 made in I.A.No.285 of 2015 in O.P.No.1343 of 2014 on the file of the learned I Additional Judge, Family Court, Chennai, awarding an amount of Rs.40,000/-p.m as interim maintenance from the date of petition and for enhancement of the same to Rs.75,000/- p.m.

Prayer in CMA.No.3243 of 2017 :

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act to set aside the fair order and decretal order dated 13.07.2016 made in I.A.No.285 of 2015 in O.P.No.1343 of 2014 on the file of the I Additional Family Court, Chennai.

For Appellant in
CMA.No.3243 of 2017 and
Respondent in CMA.No.1678 of 2017
: Mrs.Thenmozhi Shiva Perumal

For Respondent in
CMA.No.3243 of 2017 and
Appellant in CMA.No.1678 of 2017
: Mr.R.Srinivas

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

C.SARAVANAN

Both these appeals arise out of the fair and decretal order dated 13.07.2016 passed by the learned I Additional Judge, Family Court, Chennai in I.A.No. 285 of 2015 in H.M.O.P.No.1343 of 2014 (for brevity the lower court).

2. For the sake of convenience, the parties shall be referred to as husband and wife as both are appellant and respondent in the respective appeals.

3. By the impugned order, the husband has been directed to pay an interim maintenance of Rs.40,000/- p.m. to the wife payable on or before 10th day of every English Calendar Month from the date of petition. The order has also directed the husband to pay a sum of Rs.10,000/- towards litigation expenses.

4. These appeals are taken up together and are disposed of by this Common Judgment as they arise out of the same order of the Lower Court.

5. The wife had earlier filed the M.C.No.348 of 2013 before the I Additional Judge, Family Court, Chennai under Section 125 of Cr.P..C. to direct the respondent to pay a sum of Rs.75,000/- for herself and the minor son. The said case is said to be pending.

6. Meanwhile, the husband filed H.M.O.P.No.1343 of 2014 before the Lower Court under Section 13(1)(ia) of the Hindu Marriage Act, 1955 to dissolve the marriage on the ground of "cruelty" by the wife.

7. It is in that proceeding, the wife filed I.A.No.285 of 2015 under Section 24 of the said Act, praying for an interim maintenance for a sum of Rs.75,000/- p.m and a sum of Rs.20,000/- as litigation expenses which has culminated in the impugned order of the Lower Court.

8. The wife is aggrieved by the order to the extent the order restricts the interim maintenance to Rs.40,000 p.m and by CMA.No.1678 of 2017 seeks enhancement of the interim maintenance to Rs.75,000/- p.m. as prayed in I.A.No.285 of 2015.

9. On the other hand in CMA.No.3243 of 2017, the husband seeks the assail the order awarding the interim maintenance of Rs.40,000/- p.m to the wife.

10. It is the case of the husband that the wife was leading luxurious life and that he was unable to control her for indiscriminately using the credit cards and that the wife indulged in several acts of cruelty which led filing of the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 for dissolving the marriage. It is also the case of the husband that he had purchased a car due to the pressure of the petitioner. Several other instance have been stated in the pleading which according to the husband amounted to cruelty by wife and that the wife did not deserve interim maintenance under Section 24 of the Act. It has been further argued that considering the fact that the wife was qualified and capable of earning money for herself, there was no necessity for awarding interim maintenance.

11. The wife on the other pleads helplessness and states that she is unemployed and is single handedly bringing up their minor son and that the amount ordered is insufficient to meet out the expenses.

12. Heard both the learned counsel appearing for the respective parties and have perused the materials available on record.

13. The learned counsel for the husband would contend that the wife is a M.B.A. Graduate and qualified to be employed and has sufficient means to maintain herself. It is also contended that while the husband has taken efforts for a reunion but the

wife was not willing for the same and her intention was only to delay the proceedings. The husband has paid a sum of Rs.16,00,000/- by way of interim maintenance from May 2014 to 5th April 2017.

14. The learned counsel for the husband has further contended that the husband was already over burdened with income tax, Insurance, loan, House Rent etc., and that he is also taking care of his aged parents and therefore, the wife did not deserve interim maintenance under Section 24 of the Hindu Marriage Act.

15. Per contra, the learned counsel for the wife argued that the order of the lower Court restricting the amount to Rs.40,000/- as interim maintenance to the wife is perverse, against law and facts and probabilities of the case. It is contended that the lower court awarded a very low and meager sum as interim maintenance and that the Court ought to have seen that the husband was earning more than Rs.3,00,000/- p.m as salary and that he suppressed the same and that he disclosed a lower income and deliberately played fraud upon the court.

16. It was further contended that the lower Court ought to have seen that going by the salary of the husband and the status of the parties, Rs.40,000/- p.m awarded as interim maintenance was grossly inadequate considering the fact that the wife has to maintain herself and the minor son and to educate him. Hence, Counsel prayed for enhancement of interim maintenance to Rs.75,000/- p.m.

17. It was also argued that the order of the lower Court is contrary to the well settled the principles of law, while determining the interim maintenance and therefore, the lower Court committed an error in restricting the award to only Rs.40,000/- as interim maintenance.

18. It was specifically argued that the husband was currently drawing an income of Rs.3,11,373/- per month as on 31st May 2017 and sought to produce a copy of the Axis Bank Statement of the husband for the period of 20.04.2017 to 20.06.2017 in an attempt to buttress the above point.

19. We are however not inclined to consider the same as it was not produced before the Lower Court. At the same time,

the husband has not challenged the finding of the Lower Court that he was drawing a salary of Rs.2,00,000/- p.m. Though it was contended that the Wife is employed, the husband has not produced any evidence to substantiate the same. It is the case of the husband that the wife is capable of earning and therefore, he should not be burdened.

20. At this stage, we are also not going into the merits and demerits of the argument regarding the alleged acts of "cruelty" by wife as contended on behalf of the husband, as same has to be established in the proceeding before the lower court in H.M.O.P No. 1343 of 2014. We will confine to only factors that are relevant for the purpose of determination and awarding of the quantum of interim maintenance under Section 24 of the Act.

21. We have considered to the pleadings, document filed before the lower Court and the arguments advanced on behalf of the respective parties.

22. The facts that emerge from the record for the purpose of Section 24 is that the husband is drawing Rs.2,00,000 p.m as salary and that the wife has no means to support herself and minor son in absence of any evidence to the contrary. As the wife is not employed she also has no means to pay for the litigation.

23. It is in the light of these facts and circumstances, the question to be answered by this Court, is whether the order of the Lower Court has to be set aside as prayed for by the husband or whether the order of the lower court has to be modified to enhance the interim maintenance to Rs.75,000/- as prayed for by the wife.

24. The law regarding the payment of interim maintenance under Section 24 of the Hindu Marriage Act, 1955 is well settled. For the sake of clarity Section 24 of the Act is reproduced below:

" Section 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".

25. It is clear that the party seeking interim maintenance should not 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 Court.

26. 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."

27. 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.

28. Further, yardstick relevant for determining and awarding permanent alimony under Section 25 of the Hindu

Marriage Act, 1955 cannot be applied for awarding interim maintenance under Section 24 of the Act.

29. The purpose of Section 24 of the Act is to provide adequate financial support to the husband or the wife, as the case may be, if the independent income is not sufficient to maintain himself or herself pending final conclusion of the main matrimonial proceedings. It is an interim relief for maintenance only.

30. The wife in her CMA seeks enhancement of the maintenance based on the income earned by the husband based on the grounds and arguments put forward. Such a prayer cannot be entertained for the purpose of determination of the quantum under Section 24 of the Act. Therefore, the prayer for enhancement of interim maintenance of Rs.75,000/- based on the income of the husband to match the demand cannot be entertained.

31. At the same time, under the facts and circumstances of the case, the husband also cannot walk away from the burden cast upon him under Section 24 at this stage without proper evidence to the contrary that the wife has sufficient means to support herself.

32. Uncontroverted fact that the wife is unemployed and has to take care of the child singlehandedly and has no independent means of income cannot be ignored. Likewise, finding given by the Lower Court that the husband is earning Rs.2,00,000/- p.m. also cannot be ignored. We are inclined to hold that no serious fault can be found in the impugned order of the Lower Court.

33. At the same time, we are also of the considered view that to meet the ends of justice the interim maintenance awarded to the wife can be increased by another sum of Rs.5,000/- p.m. Thus, the husband is directed to pay a sum of Rs.45,000/- p.m. to the wife as interim maintenance.

34. We have also noticed that the divorce petition is pending since April 2014. Parties have spent quite some time litigating at the interlocutory stage and the scope for bringing a closure to the case one way or the other has eluded them. Further, the marriage was solemnized in 2002 and the parties have been away from each other from February, 2013.

They have thereafter spent time litigating leaving little scope for adjustment for leading life together. Litigations appears to have taken over their life.

35. We cannot lose sight of the fact that both the parties are still young and ultimately have to either start a new life either together or part ways. Whatever may be ultimate out come of the divorce proceeding, we are of the view that the parties deserve an early resolution of the dispute before Lower Court. Therefore, this a fit case for expediting the proceedings instead of allowing the parties to spend rest of their productive life in litigation for years to come.

36. We would therefore request the Lower Court to take up H.M.O.P No.1343 of 2014 on day to day basis and try to complete the case within a period of six months after giving each of the parties sufficient opportunity to establish their case.

37. In the result, it is ordered as follows:

i. CMA.No.1678 of 2017 is partly allowed by modifying the fair order and decretal order dated 13.07.2016 in I.A.No.285 of 2015 in H.M.O.P.No.1343 of 2014 on the file of the I Additional Judge, Family Court, Chennai with a direction to the Respondent-husband to pay a sum of Rs.45,000/- per month as monthly interim maintenance to the Appellant-wife in CMA.No.1678 of 2017.

*ii. CMA.No.3243 of 2017 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

25.06.2018

*** Amended as per order of this court dated 29.06.2018 and made here in CMA.No.1678 & 3243 of 2017**
Sd/-

Assistant Registrar

17/07/2018 //True Copy//

Sub Assistant Registrar

kkd

To

I Additional Judge, Family Court,
Chennai.

**To be substituted to the
order already dispatched
on 27/06/2018**

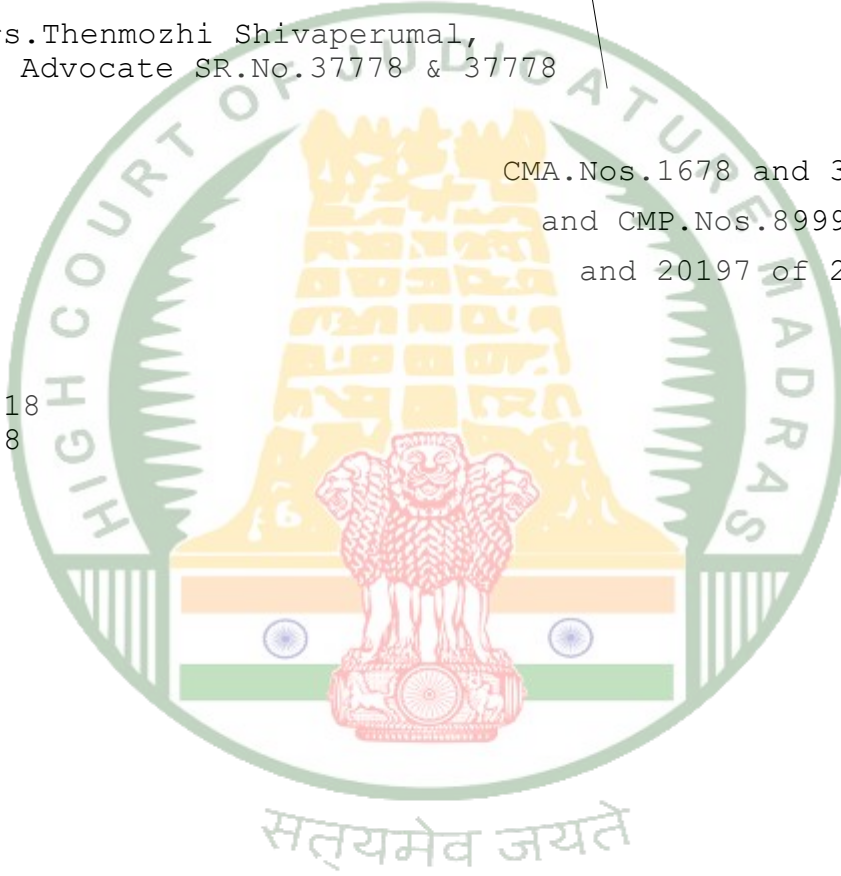
Copy to: The Section Officer
VR Section, High Court,
Madras.

+2cc to Mr.R.Srinivas, Advocate
SR.no.38335 & 38336

+2cc to Mrs.Thenmozhi Shivaperumal,
Advocate SR.No.37778 & 37778

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and CMP.Nos.8999 of 2017
and 20197 of 2017

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