

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-06-2018

CORAM:

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

Civil Miscellaneous Appeal No. 898 of 2018
and
C.M.P. No. 7464 of 2018

S.N. Venkata Krishnan

... Appellant/Petitioner

Versus

P. Jaya Bharathy

... Respondent/Respondents

Appeal filed under Section 19 of The Family Court Act against the Order dated 06.03.2018 passed in I.A. No. 3729 of 2017 in O.P. No. 3092 of 2017 on the file of VI Additional Family Court, Chennai.

For Appellant : Mrs. D. Kamatchi

For Respondent : Mr. K. Harikrishnan

JUDGMENT

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

This appeal is filed as against the order dated 06.03.2018 passed in I.A. No. 3729 of 2017 in O.P. No. 3092 of 2017 on the file of VI Additional Family Court, Chennai, in and by which, the Family Court partly allowed the application filed by the respondent herein in I.A. No. 3729 of 2017 in OP No. 3092 of 2017 and directed the appellant to pay a sum of Rs.15,000/- per month towards interim maintenance to the respondent and Rs.15,000/- towards litigation expenses.

2. The Original Petition was filed by the husband/appellant herein contending that his marriage with the

respondent/wife was solemnised on 16.06.2016 at Periyar Kalyana Mandapam, Chennai as per Hindu rites and customs and the marriage was arranged by elders of both the families. Prior to the marriage, an engagement ceremony took place on 25.02.2016. The marriage expenses were shared by the family of the appellant as well as by the respondent and after the marriage, the respondent stayed in the house of the appellant for a short period. During such stay, the respondent did not even allow the appellant to touch her and she refused to even talk to him freely. Even when the appellant and the respondent went to Wayanad for a honeymoon, the respondent expressed her unwillingness to engage in any physical relationship. When the appellant attempted to have sexual intercourse with the respondent, she pushed him away and not even allowed him to touch her. Even though the honey moon trip was planned till 30.06.2016, the appellant and the respondent returned back to Chennai even on 29.06.2016. When the appellant and the respondent reached Chennai Railway Station, the parents of the respondent took her to their home without even informing the appellant or his parents. Thereafter, when the appellant informed the father of the respondent about her refusal to cohabit, the father of the respondent informed that the fault is attributable towards the appellant and required the appellant to undergo a medical test. In order to disprove the allegations levelled against the appellant, he even underwent a medical test on 01.07.2016 and the results were in favour of the appellant. Therefore, on 02.07.2016, when the medical reports were shown to the parents of the respondent, they understood that the fault is on the respondent. Above all, the appellant submits that the respondent was adamant in character, she did not discharge her matrimonial obligations and did not respect the elders in the family. Even during the short stay in the matrimonial home, the respondent used to go to the hospital every week to get an injection and the reasons for the same were not revealed to the appellant. As per the advice of the parents of the respondent, the respondent returned back to the matrimonial home on 03.07.2016, however, there was no change in her attitude. On 27.07.2016, the family of the appellant and the respondent went to Thirupathi to have a darshan of the deity and even during such trip, the respondent remained calm and did not speak to any one. During October 2016, the appellant, respondent and the parents of the appellant went to Kasi and there also the respondent remained alone and did not show any interest to enjoy the trip. During November 2016, the respondent became pregnant and the appellant took adequate care and provide all the comforts to her. During December 2016, the respondent went to her parents house and on 26th December 2016 when the appellant went to see her, he was abused and driven out of her parents house due to a petty quarrel. On 17.02.2017, a function was arranged to celebrate the 5th month of the pregnancy. One day

prior to the said function, the respondent asked the appellant to return all her jewels kept in the matrimonial home and accordingly they were returned. On 01.04.2017, the respondent came to the matrimonial home and at that time, there was a quarrel between the appellant and the respondent which was witnessed by the tenants in the house. Thereafter, the respondent immediately left the matrimonial home. On 11.07.2017, the respondent delivered a female child and the appellant along with his parents went to the Nursing home and met the respondent and the new born child. Subsequently, when the appellant and his father went to the parents house of the respondent on 29.07.2017, the respondent did not treat the appellant and his father properly and there was a quarrel in this regard. During such quarrel, the father of the respondent as well as the respondent physically assaulted the appellant's father and torn his shirt which had come as a rude shock to the appellant and his father. Thus, according to the appellant, by reason of the adamant and unruly behaviour of the respondent and his father, his matrimonial life has been ruined and he was subjected to acute matrimonial cruelty. In such circumstances, the appellant has filed the Original Petition for dissolution of the marriage on the ground of cruelty.

3. On notice, the respondent has filed a Original Petition in O.P. No. 3613 of 2017 for restitution of the conjugal rights.

4. That apart, the respondent has filed I.A. No. 3729 of 2017 under Section 24 of The Hindu Marriage Act praying to issue appropriate direction to the appellant to pay interim maintenance of Rs.40,000/- per month and Rs.15,000/- towards litigation expenses. According to the respondent, she has no independent source of income to maintain herself and the new born female child. She is depending upon her parents for meeting the medical expenses for the new born child and also to meet her petty expenses. Therefore, she has filed the instant petition for grant of interim maintenance.

5. Opposing the application for interim maintenance, the appellant has filed a counter affidavit contending that the desertion of the respondent from his matrimonial company is wilful and voluntary. The respondent is a highly qualified graduate and she is looking after the family business of her father. The income of the respondent for the month of November 2017 is Rs.27,140/- and December 2017 was Rs.23,402/- and therefore it is not as though the respondent is not having any independent source of income to maintain herself. It was also stated that the appellant is ready and willing to meet the medical expenses of the minor child as a dutiful father to the tune of Rs.4,000/-. Therefore, the appellant prayed for dismissal of the application for interim maintenance.

6. Before the Family Court, both sides did not let in any oral or documentary evidence. The Family Court, considering the averments in the application as well as the counter affidavit and the argument advanced by counsel for both sides, concluded that the appellant is bound to maintain the respondent and his minor child inasmuch as the respondent has no independent source of income to maintain herself and the minor daughter. Thus, the Family Court has directed the appellant to pay a sum of Rs.15,000/- as interim maintenance besides Rs.15,000/- towards litigation expenses. Challenging the same, the present appeal is filed by the appellant.

7. The learned counsel appearing for the appellant would contend that the appellant has to maintain his family consisting of himself and his aged parents and the income that he earns is just and sufficient to meet the expenses for his family. That apart, the appellant had categorically stated that he is ready and willing to meet the medical expenses for the minor daughter to the tune of Rs.4,000/- per month, while so, the Family Court ought not to have directed the appellant to pay a sum of Rs.15,000/- per month for maintenance of the respondent and the minor child. That apart, it is argued by the counsel for the appellant that the respondent is looking after the business of her father and she is earning not less than Rs.25,000/- per month and therefore, he prayed for setting aside the order passed by the Family Court.

8. Per contra, the learned counsel for the respondent would contend that the respondent has no wherewithal to maintain herself. Even though it is alleged that the respondent is earning about Rs.25,000/- per month, the appellant has not filed any documentary evidence to substantiate the same. The Family Court, taking note of the prevailing cost of living has rightly directed the appellant to pay Rs.15,000/- per month towards 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. In the counter affidavit filed by the appellant, it was stated that the respondent is looking after the family business run by her father and that the income of the respondent during November 2017 was Rs.27,140/- and December 2017 was Rs.23,402/-. Even though such an averment was made by the appellant, there was no documentary evidence filed by the appellant to substantiate the same. In the absence of any documentary evidence to show the income of the respondent, the averments of the appellant cannot be sustained. The appellant, being the husband, has an obligation to maintain the respondent and the minor female child till the disposal of the Original

Petition and such an obligation on the part of the appellant is not only legal but also moral. Even otherwise, we feel that the sum of Rs.15,000/- awarded by the Family Court towards interim maintenance will be just and sufficient for the respondent to maintain herself and the minor child given the prevailing cost of living. Therefore, we feel that the Family Court is wholly justified in directing the appellant to pay a sum of Rs.15,000/- towards interim maintenance.

10. In the result, we confirm the Order dated 06.03.2018 passed in I.A. No. 3729 of 2017 in O.P. No. 3092 of 2017 on the file of VI Additional Family Court, Chennai. Resultantly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Taking note of the nature of dispute between the appellant and the respondent and the fact that the respondent has also filed O.P. No. 3613 of 2017 for restitution of the conjugal rights, we direct the learned VI Additional Family Judge, Chennai to take up both O.P. Nos. 3092 of 2017 filed by the appellant and O.P. No. 3613 of 2017 filed by the respondent and disposed of the same within a period of four months from the date of receipt of a copy of this Judgment.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
VI Additional Principal Family Court
Chennai

+1cc to Mr.K.Harikrishnan, Advocate, S.R.No.3601121

+1cc to Mr.S.G.Murugesh, Advocate, S.R.No.36199

CMA No. 898 of 2018

SR(CO)
GSP(25/07/2018)