

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2703 and 2766 of 2019

Indira ... appellant in C.M.A.No.2766/2019 and
respondent in C.M.A.No.2703/2019

Vs

S.Suresh Kumar ... respondent in C.M.A.No.2766/2019 and
appellant in C.M.A.No.2703/2019

PRAYER: Civil Miscellaneous Appeals filed against the order dated 30.05.2019 in I.A.No.5741/2018 in O.P.No.1919/2017 by the Principal Family Court Judge, Chennai.

Appearance :-

Thiru.Raghavalu, A.K., for appellant in C.M.A.No.2766/2019 and respondent in C.M.A.No.2703/2019

Thiru.R.Abdul Mubeen for appellant in C.M.A.No.2703/2019 and respondent in C.M.A.No.2766/2019

COMMON JUDGMENT
(made by K.K.SASIDHARAN, J.)

The Principal Family Court, Chennai, notwithstanding the evidence available on record indicating the financial position of the respondent in C.M.A.No.2766 of 2019, and the sole proprietorship business carried on by him in the name and style of "Rolex Electro Cab" engaged in the manufacture and distribution of power cable and electric wires with a turnover of about Rs.10 crores, awarded only a sum of Rs.20,000/- to the wife and her three children towards interim maintenance and rejected the claim for reimbursement of the rent paid to the residential apartment taken on rent by the wife on the ground that such expenses would not come within the meaning of maintenance under Section 24 of the Hindu Marriage Act. Feeling aggrieved by the denial of reasonable amount of maintenance, the wife who was the petitioner in I.A.No.5741/2018, filed miscellaneous petition in CMA No.2766/2019. The very same order

is under challenge at the instance of the husband on the ground that the Family Court was not justified in fixing monthly maintenance at Rs.20,000/- p.m.

2. The parties are referred to as the appellant and respondent taking into account their position in C.M.A.No.2766 of 2019.

3. The marriage of the appellant with the respondent was solemnized on 8 May 2002 in accordance with the Hindu Religious rites and custom of the community. The marriage was solemnized at the residence of the appellants at Chorau, Jalore District, Rajasthan. In the said lawful wedlock, three children were born to the parties. The parties have been residing at Sowkarpur, Chennai. The respondent has been doing his proprietary business in the name and style of "Rolex Electro Cab". The respondent is stated to be the sole proprietor of the concern and it has got a turn over of about Rs.10 crores.

4. The respondent initiated proceedings in O.P.No.1919/2017 before the Family Court, Chennai, for a decree dissolving the marriage on the ground of cruelty. The original petition was opposed by the appellant by filing counter affidavit.

5. Before the Family Court, the appellant filed a miscellaneous petition in I.A.No.5741 of 2018 claiming interim maintenance at the rate of Rs.55,000/- p.m., besides litigation expenses. The application was opposed by the respondent on the ground that he never denied maintenance to the appellant and her children.

6. The Principal Family Court, Chennai, considered the pleadings and the documents available on record and allowed the application in part by directing the respondent to pay maintenance at the rate of Rs.20,000/- p.m. The plea for reimbursement of the monthly rent and rental advance were rejected on the ground that such payment would not come within the meaning of Section 24 of the Hindu Marriage Act. Feeling aggrieved by the order dated 30 May 2019, two Civil Miscellaneous Appeals have been filed one at the instance of the wife and the other by the husband.

7. We have heard the learned counsel for the parties.

8. The proceedings in O.P.No.1919 of 2017 was instituted by the respondent. The respondent prayed for a decree dissolving the marriage solemnized on 8 May 2002.

9. The appellant in her interlocutory application in I.A.No.5741 of 2018, submitted that she is staying at Nellore

with her three children in a rental apartment. She has to pay the rent and meet the educational expenses of the children. The appellant contended that the respondent is wealthy and therefore, he would be in a position to pay maintenance at least at the rate of Rs.55,000/- per month.

10. Before the Family Court, the appellant produced documents indicating the payment of the school fees. The documents in Ex.P-4 and P-5 were marked to show the business carried on by the respondent. The respondent on the other hand produced the statement of accounts for the year 2016-17 and 2017-18 relating to Rolex Electro Cab and it was marked as Ex.R-1.

11. The learned Family Court Judge arrived at a factual conclusion on the basis of the documents and more particularly the statement of accounts that the respondent has been earning a sum of Rs.50,000/- p.m. The Family Court therefore fixed the monthly maintenance at the rate of Rs.20,000/-.

12. We have perused the documents available on record. We have also perused the documents produced by the appellant in the additional typed set of papers.

13. The respondent is the sole proprietor of the concern by name "Rolex Electro Cab", which was established in the year 2011. The firm is engaged in the manufacture and distribution of power cable and electric car. The turnover is stated to be in the range of Rs.5 crores to Rs.10 crores annually. The statement of accounts produced before the Trial Court also indicates the income generated by the respondent from his business.

14. There is no dispute that the appellant has been staying in a residential apartment on rent at Nellore, along with her three children. The children are studying in two premium educational institutions at Nellore. While fixing the maintenance as an interim measure, the Trial Court was expected to consider the financial condition of the parties. The appellant is residing away from Chennai along with her three children. The respondent is a businessman earning substantial amount per month. It would not be possible for the appellant to maintain herself and three children with the maintenance awarded by the Trial Court. She has to bear the entire expenses of the children, including the expenses relating to education. The Family Court was expected to strike a balance while considering a case of this nature. The Court should also be sensitive to the situation. The prices of the essential commodities and the difficulty to manage the family consisting of three children should also be taken note of while fixing the maintenance.

15. After hearing the learned counsel for the parties and on a perusal of the entire materials on record, we are of the view that the Trial Court was not justified in fixing the monthly maintenance at Rs.20,000/-. We are also of the view that interest of justice would be sub-served by directing the respondent to pay monthly maintenance at the rate of Rs.40,000/- (Rupees Forty Thousand only) per month. The respondent is given eight weeks time from today, to pay the entire arrears. The respondent should also continue to pay the maintenance at the rate of Rs.40,000/- p.m., in addition to the arrears.

16. The Civil Miscellaneous Appeal in C.M.A.No.2703 of 2019 is dismissed. The connected appeal in C.M.A.No.2766 of 2019 is allowed. No costs. Consequently, C.M.P.No.13566 of 2019 is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

tar

To

1.The Principal Family Court Judge, Chennai

Copy to: The Section Officer,

VR.Section, High Court, Madras.

+2cc to Thiru.Raghavalu, A.K., Advocate SR.81814,81815

+2cc to Thiru.R.Abdul Mubeen, Advocate SR.81846,81845

C.M.A.Nos.2703 & 2766/2019

SSV(CO)

CB(21/11/2019)