

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.09.2019
CORAM

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

C.M.A. No. 2158 of 2017
and
CMP No.11468 of 2017

P. Dhillip Kumar Appellant

versus

T.K. Durga Devi Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court against the fair order and decretal order in I.A. No.2050 of 2015 in O.P. No.4256 of 2011, dated 27.06.2016 passed by the III Additional Judge, Family Court, Chennai.

For Appellant : Mr.J.Selvarajan
For Respondents : M/s.M.Umashankar
S. Magesh Kumar

JUDGMENT

(The Judgment of the Court was delivered by Abdul Quddhose, J.)

This Civil Miscellaneous Appeal has been filed challenging the order dated 27.06.2017 passed by the III Additional Family Court, Chennai in I.A. No.2050 of 2015 in OP No.4256 of 2011, directing the Appellant to pay the respondent a sum of Rs.8000/- p.m. as interim maintenance from the date of petition i.e. 2.11.2015 and a sum of Rs.10,000/- towards litigation expenses.

Brief facts leading to the filing of the instant appeal

2. The Appellant, who is the husband filed H.M.O.P. No.4256 of 2011 under Section 12(C) of the Hindu Marriage Act, 1955 before the III Additional Family Court, Chennai against the respondent / wife to declare issolve the alleged marriage dated 24.01.2011 between the Appellant and the respondent as a nullity.

3. During the pendency of H.M.O.P. No.4256 of 2011, the respondent / wife filed I.A. No.2050 of 2015 in H.M.O.P. No.4256 of 2011 under Section 24 of the Hindu Marriage Act, seeking for interim alimony of Rs.15,000/-p.m. from the date of petition and

a consolidated sum of Rs.50,000/- to meet the litigation costs and another sum of Rs.1,000/- towards travelling expenses.

4. By an order dated 27.06.2016 in I.A. No.2050 of 2015, the learned III Additional Principal Judge, III Additional Family Court, Chennai, directed the Appellant to pay the respondent a sum of Rs.8,000/- p.m. from the date of petition i.e. from 02.11.2015 as interim maintenance and a sum of Rs.10,000/- towards litigation expenses.

5. Aggrieved by the order dated 27.06.2016 passed in I.A. No.2050 of 2015 in O.P. No.4256 of 2011, this appeal has been filed by the Appellant / husband.

6. Heard Mr.J.Selvarajan, learned counsel for the Appellant and Mr.M.Umashankar, learned counsel for the respondent.

7. The Appellant has challenged the impugned order on the ground that since the Appellant has filed the petition under Section 12 (c) of the Hindu Marriage Act, seeking for a declaration of the Marriage between the Appellant and the respondent as a nullity, the Family Court ought not to have directed the Appellant to pay a sum of Rs.8,000/- as interim alimony.

8. It is also the contention of the Appellant that the respondent is well employed and therefore, the Tribunal ought not to have awarded interim alimony to her and further, it is his case that the quantum of interim maintenance awarded by the Family Court is excessive.

9. However, it is the case of the respondent that the marriage was legally solemnised between the Appellant and the respondent and since, the respondent is not employed and not having any means of income on her own, the Family Court has rightly awarded interim maintenance of Rs.8,000/-p.m. and Rs.10,000/- towards litigation expenses. Further, it is represented that the Appellant has not paid any maintenance amount subsequent to the impugned order.

Discussion :

10. The right of a wife for a maintenance is an incident of the status or estate of matrimony. Section 24 of the Hindu Marriage Act, which provides for maintenance pendente lite and expenses of proceedings, clearly applies to all proceedings under the Act. An order for maintenance pendente lite and costs of the proceedings, can, as the initial words of the section clearly state, be made in any proceeding under the Act, viz. for restitution of conjugal rights, judicial separation, divorce or nullity of void and voidable marriage.

11. When a fact of marriage is acknowledged or proved alimony follows subject of course to the discretion of the Court

in the matter having regard to the means of the parties and it would be no answer to the claim for maintenance pendente lite that the marriage was void ipso jure or was voidable. The fact that there is a strong possibility of the marriage being declared as a nullity is no ground for declining even the basic right to claim interim alimony and expenses of the litigation.

12. Section 24 of the Act does not distinguish between the petitions filed for restitution of conjugal rights, judicial separation, divorce or nullity of void and voidable marriage and the Section has made it very clear that it applies to any proceeding under the Hindu Marriage Act, 1955. The Family Court has rightly rejected the contention of the Appellant on this ground and awarded interim alimony to the respondent.

13. We shall now consider whether the quantum of interim alimony awarded by the Family Court, Chennai is excessive or not. Before the III Additional Judge, Family Court, Chennai, both the parties have not produced any documentary evidence as regards their respective incomes.

14. The respondent / wife, who filed I.A. No.2050 of 2015 in O.P. No.4256 of 2011 under Section 24 of the Hindu Marriage Act, 1955 and is the affidavit filed in support of the said application, she has pleaded that she is jobless and is dependant on her brother for her financial support. She has also pleaded that the Appellant is working as a site Engineer in Nava Yuga Infotech Pvt. Limited, earning Rs.30,000/- and he belongs to an affluent family having many properties worth several lakhs.

15. In I.A. No.2050 of 2015 filed under Section 24 of the Hindu Marriage Act, 1955, the respondent sought for interim maintenance of Rs.15,000/- and a consolidated sum of Rs.50,000/- to meet her

litigation costs and another sum of Rs.1,000/- towards travelling expenses.

16. Even though the Appellant in his counter affidavit filed in I.A. No.2050 of 2015 has stated that the respondent was working in T.T.K. Hospital, Adayar, no documentary evidence was produced by him before the Family Court to substantiate the same. He has also not filed any documentary evidence to prove his monthly income.

17. After considering the pleadings as well as the oral evidence, the Family Court has passed the impugned order dated 27.06.2016 in I.A. No.2050 of 2015 in O.P. No.4256 of 2011, directing the Appellant to pay the respondent a sum of Rs.8,000/- as interim maintenance from 02.11.2015 and a further sum of Rs.10,000/- towards litigation expenses.

18. The Family Court has passed the impugned order, which is not substantiated by any documentary evidence. Admittedly, there are no issues out of the alleged wedlock between the parties. The interlocutory application filed under Section 24 of the Hindu Marriages Act, 1955 was filed by the respondent in the year 2015. Since, both the parties have not produced any documentary evidence regarding their income, we are of the considered view that a sum of Rs.8,000/- fixed by the Family Court as interim maintenance is on the higher side and it has to be reduced to Rs.6,000/- p.m., which will be a sufficient sum for the respondent to maintain herself, pending disposal of H.M.O.P. No.4256 of 2011.

19. Insofar as the litigation costs are concerned, we confirm the order of the Family Court and direct the Appellant / husband to pay the respondent / wife, a sum of Rs.10,000/-, as directed by the Family Court.

20. In the result, the Civil Miscellaneous Appeal is partly allowed by directing the Appellant to pay the respondent a sum of Rs.6,000/- p.m. towards alimony from 02.11.2015, being the date of filing of the H.M.O.P No.4256 of 2011, till the date of realisation within a period of four weeks from the date of receipt of a copy of this order along with a

sum of Rs.10,000/- towards litigation costs, as directed by the Family Court. No costs. Consequently, connected miscellaneous petition is closed.

21. The Family Court shall proceed to hear the H.M.O.P. No.4256 of 2011 only on compliance of this order by the Appellant.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To :

The III Additional Judge,
Family Court,
Chennai.

A.SK(09/01/2020)

C.M.A. No. 2158 of 2017