

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	16.07.2020
Pronounced On	27.07.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.615 of 2020
and
C.M.P.No.3744 of 2020

(Through Video Conferencing)

G.Anusuya ... Appellant

Vs.

M.Lokesh @ Madhan ... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, to set aside the fair order and decretal order dated 19.12.2019 passed in I.A.No.1 of 2019 in H.M.O.P.No.14 of 2019 on the file of the Family Court at Thiruvallur and order interim maintenance of Rs.20,000/- and litigation expenses of Rs.25,000/- to the appellant from the date of filing of the I.A.No.1 of 2019 in H.M.O.P.No.14 of 2019.

For Appellant : M/s.V.Pushpa

For Respondent : Mr.Ms.Thomas D. Jacob

J U D G M E N T

C.SARAVANAN, J.

Appellant wife is aggrieved by the impugned Fair and Decretal order dated 19.12.2019 passed by the Family Court, Tiruvallur in I.A.No.1 of 2019 in H.M.O.P.No.14 of 2019. By the impugned Fair and Decretal order, the Family Court has awarded a sum of Rs.2000/- as monthly maintenance payable by the respondent to the appellant from December 2019 till the disposal of the case, on or before 10th or every English Calendar and a further sum of Rs.5,000/- towards litigation expenses.

2. Grievance of the appellant is that the Family Court erred in awarding a very low monthly maintenance of Rs.2,000/- from the date of the order. The impugned Fair and Decretal order of the Family Court is sought to be assailed on the ground that the Court erred in awarding a very low amounts of Rs./-2000 as interim maintenance even though the respondent husband was drawing a handsome salary from Tamil Nadu Electricity Board as an employee of Tamil Nadu Generation and Distribution Corporation.

3. We have considered the arguments of the learned counsel for the appellant and the learned counsel for the respondent.

4. The marriage of the appellant and the respondent was solemnised on 20.05.2015 as per the Hindu customs. Allegation of the respondent was that within 10 days of the marriage, the appellant left the matrimonial home and did not return and thereafter the respondent was compelled to file an application under Section 9 of the Hindu Marriage Act, 1955, on 11.10.2017 for restitution of conjugal rights before the Sub-Court, Gingee. The said proceedings was later transferred to the Family Court, Tiruvallur at the behest of the appellant by obtaining an exparte order from this Court.

5. In the said proceedings, the appellant filed I.A.No.1 of 2019 for interim maintenance under Section 24 of the Hindu Marriage Act, 1955, on 03.04.2019.

6. It is the case of the appellant that the respondent's gross income as on September 2019 was Rs.30,140/- and after deduction of Rs.3,894/- the respondent was receiving a net amount of Rs.26,246/-. It is further submitted that the respondent had income from properties and therefore, as a husband, he was liable to maintain the appellant wife.

7. It is further submitted that the respondent had assaulted the appellant, as a result of which, she suffered an injury in her spinal cord, which has made it difficult for her to work as an advocate. The Fair and Decretal order of the Family Court is also sought to be assailed on the ground that having noted that the admission of the respondent that the appellant had sustained injury and was suffering from back pain, the Court ought to have awarded higher maintenance per month to the appellant as she is struggling to maintain herself. It is therefore submitted that a sum of Rs.2000/- as interim maintenance award and Rs.5000/- towards litigation expenses till the disposal of the case require to be enhanced.

8. The respondent has denied the allegation. It is stated that the appellant had suffered the injury during a college days and it has not stopped her from practicing as an advocate and that she was having independent income.

9. On behalf of the respondent, it is submitted that the impugned Fair and Decretal order passed by the Family Court was well reasoned and requires no interference. It is further submitted that the appellant was a practicing advocate in the same court and therefore the Family Court noting the same has award the aforesaid maintenance amount. It is further submitted that the respondent is willing to lead a peaceful life with the appellant if she is willing to rejoin him. However, the appellant has refused to rejoin the respondent.

10. We have given our anxious consideration to the rival contentions of both the learned counsel for the appellant and the respondent and the interim maintenance awarded by the Family Court.

11. It is noticed that the marriage was solemnised as early as 20.05.2015. According to the respondent, the appellant left the matrimonial home within few days of the marriage and that the appellant was not interested in leading peaceful matrimonial life with the respondent and left on her own volition.

12. On the other hand, it is the contention of the appellant that respondent used to assault the appellant which resulted in injury in her spinal cord, which forced her to leave the matrimonial home. It appears apart from the proceedings initiated before the Family Court, the appellant had also initiated certain other proceedings by way of a complaint against the respondent before the All Women's Police Station, Gingee.

13. It is rather surprising that though the application for restitution of conjugal rights was filed in the year 2017 by the respondent husband, the application for interim maintenance under Section 24 of the Hindu Marriage Act, 1955 was filed by the appellant only on 3rd April, 2019.

14. It seems to indicate that the appellant has managed after she left the matrimonial home all along either with her own income or from the support of her parents. However, there are no evidences to show that the appellant as a practicing advocate was having an independent income to lead an independent life without the support of her parents. It also cannot be assumed that the appellant had an independent income as an advocate to take care of her needs in absence of direct evidence by the respondent. We are therefore inclined to enhance the

monthly maintenance amount by another Rs.3000 from the date of the petition.

15. Accordingly, the respondent is directed to pay a sum of Rs.5000/- per month to the appellant by 5th of every succeeding month until the completion of the proceedings pending before it under the provisions of the Hindu Marriage Act, 1955.

16. The respondent is also directed to pay the arrears of maintenance calculated at the rate of Rs.5000/- payable from 10th of May, 2019, within a period of six weeks from the date of receipt of a copy of this Judgment.

17. The Family Court is directed to complete the aforesaid proceedings in H.M.O.P.No.14 of 2019 preferably within a period of six months from the date of receipt of a copy of this Judgment. The appellant and the respondent are directed to co-operate with the Family Court.

18. Since both the appellant and the respondent are young couple and have hardly lead life together and experienced the pain and pleasure of the matrimonial life, the Court may also endeavour to find an amicable solution between the parties by referring them to go for mediation before the Mediation Centre attached to the Court so that they can settle the dispute one way or the other amicably instead of frittering away their precious moments of life litigating with each other.

19. This Civil Miscellaneous Appeal stands disposed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To:

The Judge,
The Family Court,
Thiruvallur.

+1 cc to M/s.Thomas T.Jacob, Advocate Sr.No. 25313

+1 cc to M/s.V.Pushpa, Advocate Sr.No. 25235

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C.M.P.No.3744 of 2020

SS (CO)
RMP (04/11/2020)