

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 31.07.2020

Pronounced on : 18.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 3681 of 2019

P. Dinesh Babu .. Appellant/ Petitioner / Respondent

Versus

D.J. Swathi ... Respondent/ Respondent/ Petitioner

Appeal filed under Section 19 of the Family Court Act against the Order dated 03.08.2019 passed in I.A. No. 6676 of 2018 in O.P. No. 4063 of 2018 on the file of V Additional Family Court at Chennai.

For Petitioner : Ms. D. Malarvizhi

For Respondents : Mr. R. Abdul Mubeen

JUDGMENT

R. Subbiah, J

We have taken up the hearing of this appeal through Video-conferencing.

2. The appellant/husband has come forward with this appeal questioning the correctness and/or validity of the order dated 03.08.2019 passed in I.A. No. 6676 of 2018 in HMOP No. 4063 of 2018 on the file of the V Additional Family Court, Chennai. By the said order, the Family Court directed the appellant/husband to pay a sum of Rs.15,000/- to the respondent and Rs.10,000/- to the minor child D. Nithin Sai per month towards interim maintenance from the date of the petition namely 21.12.2018, which includes litigation expenses.

3. The appellant herein has filed HMOP No. 4063 of 2018 under Section 13 (1) (i-a) and (1) (i-b) of The Hindu Marriage Act against the respondent herein before the Family Court, Chennai for dissolution of the marriage solemnised between them on 20.01.2016. As per the averments in the Original Petition, the marriage between the appellant and the respondent was solemnised on 20.01.2016 as per Hindu rites and customs at Vadapalani Andavar Temple, Vadapalani, Chennai and it was also registered on 28.01.2016 on the file of Sub-Registrar, Kodambakkam. The marriage was an arranged marriage having been solemnised at the instance of the family members of both sides. At the time of marriage, the respondent was employed in an

information technology firm and earning Rs.34,500/- per month. The request of the respondent to pay the entire salary amount after marriage to her mother was also generously accepted by the appellant. After the marriage, the appellant and respondent stayed in the parents house of the appellant at Thiruvavarur cordially. As the appellant was employed in Qatar, after two months of marriage, he left India to Qatar. During 2017, the respondent accompanied the appellant to Qatar where they lived happily for five months. As the respondent became pregnant, she returned to Chennai and stayed with her mother and sister. During such stay in Chennai, the respondent never visited his parents house at Thiruvavarur and continued to stay in her parents house. The respondent also demanded the appellant to resign his employment and come back to India, however, the appellant refused to quit his employment by citing his financial commitment including a home loan availed with Indian Bank to the tune of Rs.25 lakhs. On 29.05.2018, the respondent gave birth to a male child and the appellant came to see the child, but the appellant was not treated well by the respondent. According to the appellant, when he used the laptop of the respondent to book his return flight ticket to Qatar, he was shocked to see a video of the respondent dancing with her office staff in an inebriated condition in a tour arranged by her employer. When enquired by the appellant, the respondent shouted at the appellant and made it as if the appellant is suspecting her character. At the height of the quarrel, the respondent had shown the exit door to the appellant. Thereafter, the respondent abruptly stopped talking to the appellant over phone. On 18.07.2018, the appellant sent a legal notice calling upon the respondent to come and live with him within 15 days. The respondent, on receipt of the notice, called upon the appellant for a compromise. However, the respondent and her family members have lodged a false complaint against the appellant and his parents as if they have harassed the respondent demanding dowry. The appellant again sent another notice on 01.09.2018 calling upon the respondent to come and live with him. In spite of receipt of the notice dated 01.09.2018, the respondent did not send any reply notice. Therefore, the appellant has filed the Original Petition before the Family Court seeking dissolution of the marriage.

4. On notice, the respondent has filed I.A. No. 6676 of 2018 under Section 24 of The Hindu Marriage Act seeking interim maintenance and litigation expenses. According to the respondent, at the time of marriage, the appellant was not employed and she alone was employed in an information technology company. After marriage, the appellant and his parents did not permit the respondent to go to job and hence she was forced to resign the job. It is also stated that it was the respondent who had settled the home loan availed by the appellant with her earnings. After the loan amount was cleared, the appellant got employed in Qatar. The matrimonial life was happy and blissful for some time, however, it was ruined due to the ill advice of the parents of the appellant. Soon after the marriage, when the respondent stayed in the parents house of the appellant, she was ill treated and the

mother of the appellant want the appellant to listen to her dictates and the respondent was not permitted to say anything. It is also stated that now the respondent is not employed and she resigned her employment. The mother of the respondent is a house wife and there was no source of income for her to maintain herself and the minor male child. On the other hand, the appellant is employed in Qatar as a Project Engineer and earning Rs.2,50,000/- per month. Therefore, she prayed for appropriate direction to direct the appellant to pay Rs.50,000/- as maintenance to her and another sum of Rs.30,000/- to the minor male child per month as interim maintenance besides Rs.2,00,000/- as litigation expenses.

5. The application for interim maintenance was resisted by the appellant by filing a counter. According to the appellant, he is working as an Electrical Planning Engineer in ELT at Qatar on contract basis. According to the appellant, it is a temporary job and not a permanent job. On the other hand, the respondent is continuously working as a Software Engineer in Accenture Software Solutions, Chennai from 2013. Further, on 30.11.2019, the respondent was promoted to the post of Test Engineering Analyst and earning a sum of Rs.6 lakhs per annum. While so, it cannot be said that the respondent has no income to maintain herself. The respondent is resourceful enough to maintain herself and the minor child. The appellant would further contend that due to the matrimonial discord and the complaint given by the respondent to All Women Police Station, he was constrained to come to Chennai very frequently by availing leave, with the result, he was terminated from his employment on 19.12.2018 itself. After he was terminated from his employment, he came back to India and staying along with his parents at Thiruvavur. It is his contention that he is not employed anywhere and he is jobless. In such circumstances, the petition for interim maintenance filed by the respondent has to be dismissed.

6. Before the Family Court, on behalf of the appellant as well as respondent, no oral evidence was let in. However, the respondent marked Ex.P1, salary slip of the appellant. The Family Court, on consideration of the pleadings and the arguments adduced by the counsel for both sides, directed the appellant to pay Rs.15,000/- as interim maintenance per month to the respondent and another sum of Rs.10,000/- to the minor child D. Nithin Sai per month from the date of petition namely 21.12.2018. Challenging the same, the present appeal is filed.

7. The learned counsel for the appellant would contend that the Family Court failed to take note of the fact that the respondent is a B.E., Graduate and she started her career as a Software Engineer in 2013. At present, the respondent is employed as Test Engineer Analyst in Accenture Solutions, a Multinational Company in Chennai and earning Rs.6 lakhs per annum. On the other hand, the appellant is jobless and struggling to meet his basic needs. In fact, due to the complaint given by the respondent before the All Women Police Station, Ayanavaram, the appellant was constrained to come to Chennai frequently by availing leave from his employer. Due to

frequent leave availed by the appellant, he was subjected to disciplinary proceeding and eventually terminated from his employment on 10.06.2020. In this context, the learned counsel for the appellant relied on the affidavit filed by the appellant enclosing a letter dated 09.01.2020 of the employer of the appellant and the letter of termination dated 10.06.2020 to contend that the appellant is jobless and he has no wherewithal or resourceful enough to pay maintenance to the respondent and the minor children. Therefore, the learned counsel prayed for setting aside the order of the Family Court.

8. Per contra, the learned counsel for the respondent submits that the respondent is not gainfully employed anywhere. She is staying with her mother and sister and she finds it very difficult to meet her basic needs and that of the minor child. On the other hand, the appellant is employed in Qatar and earning Rs.2,50,000/- per month. To substantiate the same, the respondent has filed Ex.P1, salary slip of the appellant. Even though the appellant contended that the respondent is gainfully employed, he has not substantiated the same by any documentary evidence. The respondent has therefore proved that she is not resourceful enough to maintain herself and the minor child and therefore, the Family Court is right in directing the appellant to pay maintenance to the respondent and the minor child. To buttress this submission, learned counsel for the respondent relied on the decision of the Honourable Supreme Court in Deepak Jain vs. Charu Jain reported in (2007) 10 Supreme Court Cases 229 and contended that when it is shown that the wife is unable to maintain herself, she has every right to file a petition under Section 24 of The Hindu Marriage Act to seek for maintenance pendente lite and litigation expenses from the other spouse, who is qualified and self sufficient to maintain. He also relied on the decision of the Honourable Supreme Court in the case of Shamina Farooqui vs. Shahid Khan reported in (2015) 5 Supreme Court Cases 705 and contended that it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain his wife due to financial constraints as long as he is capable of earning. The learned counsel for the respondent therefore submits that the Family Court is wholly justified in coming to the conclusion that the respondent is not resourceful enough to maintain herself and consequently directed the appellant to pay the pendente lite maintenance. Further, the respondent sought for maintenance of Rs.80,000/- to herself and the minor children, but the Family Court has only directed the appellant to pay a sum of Rs.25,000/- per month which cannot be said to be exorbitant. The learned counsel for the respondent therefore prayed for dismissal of the Civil Miscellaneous Appeal filed by the appellant.

9. We have carefully considered the submission of the counsel for both sides and perused the materials placed, including the order passed by the Family Court. The appellant, by contending that the matrimonial life between him and the respondent had irretrievably broken due to various instances attributable towards the respondent, has filed the Original

Petition for dissolution of the marriage. Pending the Original Petition, the respondent has filed an application under Section 24 of The Hindu Marriage Act seeking pendente lite maintenance for herself and the minor son. According to the respondent, earlier she was employed however, after marriage, the appellant and her parents forced her to resign her employment. It is also stated that the appellant is employed in Qatar and earning Rs.2,50,000/- as monthly salary. To fortify such submission, the respondent has filed Ex.P1, salary slip of the appellant. Admittedly, Ex.P1 has not been seriously disputed by the appellant. It is also stated that as on date, the respondent is jobless and she is not gainfully employed anywhere. She is staying with her widowed mother and the residence where she is residing along with her mother was the one taken for lease. In effect, it is the submission of the respondent in the application seeking interim maintenance that she is not gainfully employed, she has no resource to meet her basic livelihood as that of the minor child.

10. But countering the plea of the respondent/wife, the appellant/husband submitted that the respondent is employed in Accenture Software Solutions, a multinational company in Chennai and earning a sum of Rs.6 lakhs per annum. When such a plea was raised by the appellant, it is for him to substantiate the same by way of oral or documentary evidence. This is more so that when the respondent says that she had left her employment long back. To prove the employment status of the respondent, the appellant has not produced any evidence. Further, even though the appellant contends that he was terminated from his employment on 10.06.2020, such termination is subsequent to the order dated 03.08.2019 passed by the Family Court. The Tribunal has no occasion to consider the plea of the appellant that he was terminated from service on 10.06.2020. Thus, as on the date when the Family Court passed the order dated 03.08.2019, the appellant was very much in employment. Furthermore, the appellant, as husband, is bound to maintain the respondent and the minor child. Such an obligation on the part of the appellant is not only legal, but also moral. The object of Section 24 of the Hindu Marriage Act is to ensure that one of the spouses, who comes to the Court with a plea for maintenance, must be provided with a minimum support for livelihood in the form of a maintenance by the other spouse. Such maintenance amount is very much necessary to be paid when the other spouse has no independent income sufficient to lead a normal life. It is needless to mention that a spouse is entitled for maintenance provided if he or she has proved to the satisfaction of the Court about his or her inability to maintain himself or herself in the absence of any gainful employment or resources at his or her command. In the present case, the respondent has substantiated her plea that the appellant is employed in Qatar and earning a sum of Rs.2,50,000/-. On the other hand, the appellant failed to prove by any documentary evidence with respect to the employment status of the respondent, even though he asserted that the respondent is gainfully employed in a Multinational Company in Chennai and earning Rs.6 lakhs. In such

circumstances, the direction issued by the Family Court to the appellant to pay a sum of Rs.25,000/- per month as maintenance to the respondent and the minor child cannot be interfered with.

11. It is stated that by an order dated 30.09.2019, this Court has granted an interim stay of operation of the order dated 03.08.2019 passed by the Family Court, on condition the appellant pay maintenance at the rate of Rs.12,000/- per month together with the entire arrears within a period of six weeks. The appellant was also directed to continue to pay the maintenance amount at the said rate pending disposal of the appeal. It is stated that the appellant had paid the entire maintenance amount at the rate of Rs.12,000/- per month until March 2020. In view of the dismissal of this appeal, the appellant is directed to comply with the order passed by the Family Court on 03.08.2019 in I.A. No. 6676 of 2018 in OP No. 4063 of 2018.

12, In the result, the Civil Miscellaneous Appeal fails and it is dismissed. No costs. Consequently, CMP No. 21076 of 2019 is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To
The V Additional Judge,
Family Court
Chennai.

+lcc to Ms. D. Malarvizhi, Advocate SR.No. 27241

+lcc to Mr.K.Mohan , Advocate SR.No. 27183

CMA No. 3681 of 2019

A.SK(19.01.2021)