

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA
AND
THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

C.M.A.No.1147 of 2021
and
C.M.P.No.5871 of 2021

M.Shankar ... Appellant/Respondent

Vs.

N.Preethi ... Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1955, to set aside the fair and decretal order dated 05.01.2021 passed in I.A.No.1 of 2019 in H.M.O.P.No.1464 of 2018 on the file of the Additional Principal Family Judge, Coimbatore, by allowing the appeal.

For Appellant : Mr.K.Balasubramaniam

For Respondent: Mr.P.Suresh Babu for Caveator

J U D G M E N T

(Judgment was delivered by G. CHANDRASEKHARAN, J.)

This Civil Miscellaneous Appeal is filed against the order passed by the learned Additional Principal Family Judge, Coimbatore, in I.A.No.1 of 2019 in H.M.O.P.No.1464 of 2018.

2.The respondent/wife filed a petition under Section 13(1) (i) (i-a) of Hindu Marriage Act, 1955, seeking divorce against the appellant. Pending the divorce proceedings, she filed I.A.No.1 of 2019 under Section 24 of the Hindu Marriage Act, 1955, seeking interim maintenance.

3.The facts necessary for the disposal of this appeal are as follows :

The marriage between the appellant and the respondent was solemnized on 02.11.2008 and they are blessed with a daughter, Sreesha, who was born on 03.10.2009. The appellant's parents

and sister demanded seer and 100 sovereigns of gold from the respondent. In 2011, the appellant got employment in Bosch Company as Associate Project Manager at Coimbatore. In 2012, the appellant purchased a flat, borrowing loan from Bank and also selling the jeweleries of the respondent. During the birthday of Sreesha on 03.10.2013, the appellant's parents and sister abused and insulted the respondent. When she informed this to the appellant, he beat her. He did not co-habit with the respondent. On 20.05.2018 at about 08.00 p.m., he brought his colleague Charulatha to home and spent time with her in a locked room. When the respondent questioned this, the appellant openly kissed Charulatha and threatened the respondent to give divorce. Then, he strangulated her and banged her head against the wall. The respondent gave a complaint before the Peelamedu Police Station. The parents and sister of the appellant had also come and beaten the respondent and drove her out of the house. In the said circumstances, she filed the petition for divorce. The respondent is totally dependent on the appellant for her and the child's maintenance. Therefore, she claimed a sum of Rs.75,000/- per month as interim maintenance and Rs.5,000/- towards litigation expenses.

4.The appellant denied all the allegations made against him and contended that, on 24.09.2018, the respondent vacated the house and moved to her parents' house. She gave legal notice and filed D.V.A.No.47 of 2018 against the appellant and his parents and the petition was quashed as against the parents of the appellant by this Court. The respondent studied M.B.A., and she was employed in SMC Global Securities and earning Rs.30,000/- per month. She studied SAP and she is capable of getting employment and maintain herself. The appellant has housing loan to settle and has to take care of his aged parents. He has already been paying Rs.5,000/- as interim maintenance in pursuance of D.V.A. Proceedings. Therefore, the appellant prayed for dismissal of the petition.

5.During enquiry, Exs.P1 and P2 and Exs.R1 to R2 were marked. On considering the materials produced before the Family Court, the learned Family Court Judge ordered the appellant to pay a sum of Rs.25,000/- per month as interim maintenance in addition to the sum of Rs.5,000/- being paid in pursuance of D.V.A. proceedings in D.V.A.No.47 of 2018, and a sum of Rs.5,000/- towards litigation expenses. That apart, the appellant was directed to bear the educational expenses of the child. Against the said order, the appellant has preferred this appeal.

6.The learned counsel for the appellant submitted that the learned trial Judge has fixed the quantum of interim maintenance

on the basis of Ex.P1/ Bank statement for the period from 01.02.2018 to 28.09.2018. Now, the appellant has filed his salary slips for the period from November, 2020 to January, 2021, which show that he was getting only a sum of Rs.70,000/- to 85,000/- as take home salary. With this amount, he has to pay the housing loan and has to take care of his aged parents. Therefore, the order passed by the learned Family Court Judge, directing the appellant to pay Rs.25,000/- per month without taking into consideration the payment of Rs.5,000/- as per the orders of this Court in D.V.A.No.47 of 2018, is not justified, and prayed for setting aside the order of the learned Family Court Judge.

7.In response, the learned counsel for the respondent submitted that the appellant is earning a handsome salary, whereas, the respondent is not employed and not earning anything. She is now supported by her parents and she could not excessively dependent on her parents for her and her child's maintenance. As a husband and father, the appellant is liable to maintain her and the child with reasonable sum as interim maintenance for their sustenance. The learned Family Court Judge has considered every aspect, including the financial and societal status of the parties, and ordered a just sum as interim maintenance. Therefore, the learned counsel for the respondent prayed for confirming of the order of the learned Family Court Judge and dismissal of this Civil Miscellaneous Appeal.

8.From the admitted case of the parties, it is seen that there is no dispute with regard to the marriage between the appellant and the respondent and birth of the child. Admittedly, the respondent/wife filed a petition for divorce under Section 13(1)(i)(i-a) of Hindu Marriage Act, 1955, against the appellant and it is pending disposal. During the pendency of the petition, she filed the present Interlocutory Application for interim maintenance for her and her child's subsistence. It is seen from Ex.P1 - Bank Statement for the period from 01.02.2018 to 28.09.2018 that the appellant got the following sums as his salary : Rs.1,72,593/-, 1,52,762/-, 95,907/-, 1,46,890/-, 1,08,077/-, 1,06,619/-, 1,02,405/- and 1,11,827/- and his average salary comes to Rs.1,24,000/- per month. The appellant has not produced any material to show that the respondent is earning sufficiently to maintain herself and her child. As per law and equity, as husband and father, he is liable to maintain his wife and the child. Even as per the salary slips produced for the months of November, 2020 to January, 2021, it is seen that the appellant has got Rs.1,00,639.42 as gross salary and Rs.85,185/- as net salary during November, 2020; Rs.1,00,306.26 as gross salary and Rs.84,128/- as net salary during December, 2020; Rs.1,00,150.12

as gross salary and Rs.70,682/- as net salary during January, 2021. It is seen that he has been paying a sum of Rs.36,548/- as EMI towards housing loan and he has also produced several receipts to show the payment towards his daughter's school fees. However, these documents had not been produced before the trial Court. The order was passed on 05.01.2021. Except the pay slip for the month of January, 2021, he could have filed the other salary slips before the trial Court. That has not been done. Even before this Court, he has not filed a petition to receive these pay slips as additional documents. Therefore, the appellant cannot rely on these documents now. When there is no positive evidence produced on the side of the appellant to show that the respondent is employed, the respondent and her daughter have to be provided with a reasonable sum as maintenance. Considering his salary details produced at the time of disposal of the petition, the learned Family Court Judge has rightly fixed Rs.25,000/- towards interim maintenance to the respondent and the child, which cannot be considered as excessive. It is true that the appellant has to pay Rs.5,000/- as per the orders of this Court in D.V.A.No.47 of 2018 and also he states that he has to take care of his parents. Still, his primary responsibility towards his wife and child in maintaining them and providing a reasonably comfortable life cannot be understated and neglected.

9. The learned trial Judge extracted the judgment of the Hon'ble Supreme Court in *Rajnish v. Neha* and another, dated 04.11.2020, which reads as follows :

"The objective of granting interim / permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded."

In the above referred judgment, the Hon'ble Supreme Court has approved the factors specified by the Delhi High Court in *Bharat Hedge v. Smt. Saroj Hegde*. The Delhi High Court has laid down the following factors to be considered for determining maintenance :

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in

a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation

11. The amount awarded u/s 125 Cr.P.C. is adjustable against the amount awarded u/ 24 of the Act."

Apart from the above said factors, the Hon'ble Supreme Court has also held that the following factors namely Age and employment of parties, right of residency, serious disability or ill health, maintenance of children and income of the wife are also be considered."

10.Considering the aforesaid guidelines and factual situation in this case, the relative financial and social status of the parties and that the respondent is not employed, this Court is of the considered view that the order passed by the learned Family Court Judge in granting Rs.25,000/- per month as interim maintenance with Rs.5,000/- as litigation expenses apart from the entire educational expenses of the child is just and reasonable. In this view of the matter, this Court confirms the order passed by the learned Family Court Judge, in I.A.No.1 of 2019 in H.M.O.P.No.1464 of 2018, and dismisses this Civil Miscellaneous Appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

The Additional Principal Family Judge,
Coimbatore.

C.M.A.No.1147 of 2021

RK (CO)
GMY (08/07/2021)



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