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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

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

C.M.A.Nos.1336 and 1456 of 2017

G.P.Bhaskar .. Appellant in CMA.No.1336/17
B.Shobana .. Appellant in CMA.No.1456/17

Versus

B.Shobana .. Respondent in CMA.No.1336/17
G.P.Bhaskar .. Respondent in CMA.No.1456/17

Prayer in C.M.A.No.1336/2017: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, to set aside the order dated 21.02.2017 made in I.A.No.1571 of 2016 by the learned Ist Additional Principal Judge, Family court, Chennai and to allow this CMA.

Prayer in C.M.A.No.1456/2017: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, to enhance the interim maintenance granted in I.A.No.1571 of 2016 in HMOP.No.2726 of 2013 dated 21.02.2017 by the Ist Additional Principal Judge, Family court, Chennai.

For Appellant/husband : Mr.S.Kumar
for M/s.G.Vijayanand Associates

For Respondent/wife : Mr.R.Santhanam

COMMON JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

Challenging the impugned fair and decreetal order passed by the learned I Additional Family Court Judge, Chennai, in I.A.No.1571 of 2016, dated 21.02.2017, directing the appellant/husband to pay Rs.10,000/- to the wife/respondent and Rs.5,000/- to the daughter towards interim maintenance, with a further direction to pay Rs.20,000/- towards litigation expenses, the husband/G.P.Bhaskar has filed C.M.A.No.1336 of



2017 seeking to quash the same and the wife/B.Shobana has filed C.M.A.No.1456 of 2017 seeking to enhance the maintenance granted in the above said Interlocutory Application.

2. When the matter was taken up on 26.04.2017, this Court, while granting an order of interim stay in C.M.P.No.7004 of 017, passed the following conditional order:-

"Heard both sides.

There shall be an order of stay on condition that the petitioner/appellant shall deposit the entire arrears amount of maintenance ordered by the learned I Addl. Judge, Family Court, Chennai, in I.A.No.1571/2016 in OP.No.2726/2013 dated 21.02.2017, within a period of four weeks, from the date of receipt of a copy of this order, failing which, the petition shall stand dismissed automatically without any further reference to this Court."

Till date, the conditional order passed by this Court directing the appellant/husband to deposit the entire arrears amount of maintenance as ordered by the learned Family Court, Chennai, in I.A.No.1571/2016 in O.P.No.2726/2013, dated 21.02.2017, has not been complied with. Therefore, as ordered by this Court, C.M.P.No.7004 of 2007 filed by the husband stood automatically dismissed, hence, for non-compliance of the interim order passed by this Court on 26.04.2017, C.M.A.No.1336 of 2017 filed by the husband/G.P.Bhaskar also stands dismissed.

3. With regard to the appeal filed by the wife seeking enhancement of maintenance, it is relevant to take note of a ratio laid down in Rajnesh Vs. Neha and another [2020 SCC Online SC 903], whereby the Apex Court held that the affidavit of disclosure of assets and liabilities annexed as enclosures I, II and III, shall be filed by both parties in all maintenance proceedings. For better understanding, paragraph 81 thereof is extracted below:-

"VI Final Directions

81. In view of the foregoing discussion as contained in Part B I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India :

(a) Issue of overlapping jurisdiction:

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being



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passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding;

(iii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

(b) Payment of Interim Maintenance

The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enumerated in Part B-III of the judgment.

The aforesaid factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factor/s which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV above.

(e) Enforcement / Execution of orders of maintenance

For enforcement / execution of orders of



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maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 r.w. Order XXI.

Before we part with this judgment, we note our appreciation of the valuable assistance provided by the Ld. Amici Curiae Ms. Anitha Shenoy and Mr. Gopal Sankaranarayanan, Senior Advocates in this case.

A copy of this judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts / Family Courts / Courts of Judicial Magistrates for awareness and implementation."

4. In the present case, the appellant/wife has not produced any document disclosing the assets and liabilities of the husband as set out of by the Hon'ble Apex Court in the above said decision. Therefore, since the formula laid down in Rajnesh's case (cited supra) has not been properly complied with, we do not find any merit in the appeal filed by the wife seeking enhancement of compensation. Accordingly, C.M.A.No.1456 of 2017 filed by the wife stands dismissed. It is made clear that in view of dismissal of appeal filed by the husband, liberty is given to the wife/B.Shobana to proceed for enforcement of the order of interim maintenance granted by the learned Family Court as mentioned in paragraph 81(e) of Rajnesh's case (cited supra). No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkm



To

1st Additional Principal Judge,
Family Court,
Chennai.

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Copy to:

The Section Officer,
VR Section,
High Court,
Madras.

+2ccs to Mr.C.V.Ramachandramurthy, Advocates Sr Nos.8006, 8007

C.M.A.Nos.1336 and 1456 of 2017

AJS (CO)
PR (22/10/2021)