



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A. No.3672 of 2019 and C.M.P. No.20996 of 2019

R.Rajarathinam

... Appellant

vs

R.Sargunam

... Respondent

Prayer: Appeal filed under Section 19 of the Family Court Act against the order passed by the V Additional Family Court, Chennai dated 19.08.2019 made in I.A. No.1 of 2019 in O.P. No.565 of 2019.

For Appellant : Mr.M.Liyagatali

For Respondent : No appearance

#### JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This appeal has been brought up before us by R.Rajarathinam, the appellant herein, challenging the correctness of the impugned order dated 19.08.2019 made in I.A. No.1 of 2019 in O.P. No.565 of 2019 passed by the V Additional Family Court, Chennai, directing him to pay a sum of Rs.8,000/- per month towards interim maintenance apart from the maintenance amount ordered in Crl.M.P. No.156 of 2018 in D.V.C. No.53 of 2017 by the XVI Metropolitan Magistrate, George Town, Chennai on 12.01.2018.

2.Learned counsel appearing for the appellant submitted that when the appellant has been eking out his livelihood from his pension of Rs.18,251/-, both the petitions in Crl.M.P. No.156 of 2018 in D.V.C. No.53 of 2017 and M.P. No.1 of 2019 in H.M.O.P. No.565 of 2019, filed by the respondent, were ordered by the XVI Metropolitan Magistrate, George Town, Chennai and the V Additional Family Court, Chennai respectively granting monthly maintenance of Rs.7,000/- and Rs.8,000/-, which is untenable. Learned counsel appearing for the appellant further submitted that the respondent wife is



living separately in the first floor and their married daughter is residing in the ground floor with her husband and sadly, the appellant, who is the owner of the house, has been residing in the terrace portion of the house and paying Rs.10,000/- towards monthly maintenance to his wife, obeying the orders passed by the XVI Metropolitan Magistrate, George Town, Chennai and the V Additional Family Court, Chennai. As the monthly pension of the appellant has been enhanced to Rs.27,000/-, the appellant has been obediently paying the above amount of Rs.10,000/- to his wife. Therefore, learned counsel appearing for the appellant prays for passing an order continuing to pay the same amount towards monthly maintenance, otherwise, the appellant will be left with no other source of income.

3.Although notice has been issued and served on the respondent, she has not entered appearance either through counsel or by herself that shows she is not inclined to answer the averments made by the appellant. Secondly, in the case of Rajnesh vs. Neha reported in 2021 (2) SCC 324, the Apex Court, while dealing with the payment of maintenance by one spouse to another, has vividly and categorically ruled that the parties approaching the Court seeking maintenance, shall file their affidavit of assets and liabilities and also the present status as on the date of filing their application so as to ensure the payment of fair maintenance by one party to other. It is necessary to extract the relevant portion as under:

'(xi) Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

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

....'

4.Although the Hon'ble Apex Court has held that the Affidavit of Disclosure of Assets and Liabilities annexed therein at Enclosures I, II and III of the judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/ Magistrates Courts, as the case may be, throughout the country, in the present case, both the parties have not filed their Affidavit of Disclosure of Assets and Liabilities, since the aforementioned judgment has been passed after filing of the petitions in CrI.M.P. No.136 of 2018 in D.V.C. No.53 of 2017 and M.P. No.1 of 2019



in H.M.O.P. No.565 of 2019. Therefore, we are unable to find out the assets and liabilities of the respondent.

5.A perusal of the Pension Payment Order No.16785 and Payment of Commutation of the appellant clearly shows that after serving as a Syrang - Marine in the Chennai Port Trust, he has been retired from service and getting pension at Rs.18,251/- as on 12.06.2017. Learned counsel appearing for the appellant fairly submitted that the monthly pension of the appellant has been enhanced to Rs.27,000/- and he has been punctually paying Rs.10,000/- to his wife towards monthly maintenance. Therefore, finding that the appellant has been paying a sum of Rs.10,000/- to his wife towards monthly maintenance, we are inclined to dispose of this appeal by giving a direction to the appellant to continue to pay the above amount. Accordingly, this appeal stands disposed of and the appellant is directed to continue to pay the above amount of Rs.10,000/- towards monthly maintenance to his wife. Consequently, C.M.P. No.20996 of 2019 stands closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vga

To

1.The V Additional Family Court,  
Chennai.

2.The Section Officer,  
V.R. Section,  
High Court, Madras.

+1cc to Mr.M.Liyagatali, Advocate SR. No.63400

C.M.A. No.3672 of 2019 and C.M.P. No.20996 of 2019

NRL (CO)  
PR (21/12/2021)