

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.NO.3630 OF 2019
AND C.M.P. NO.20868 OF 2019

B.S.Sudarsan

... Appellant/
Respondent

vs

Uthra

... Respondent/
Petitioner

Prayer:

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 21.08.2019 made in I.A. No.3544 of 2017 in O.P. No.641 of 2017 on the file of the learned I Additional Principal Judge, Family Court, Chennai.

For Appellant : Ms.D.Veda

For Respondent : No appearance

JUDGMENT

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

B.S.Sudarsan, the appellant herein, having suffered the impugned interim order dated 21.08.2019 made in I.A. No.3544 of 2017 in O.P. No.641 of 2017 passed by the learned I Additional Principal Judge, Family Court, Chennai, directing him to pay a sum of Rs.10,000/- towards interim maintenance per month, has brought this appeal.

2.Learned counsel appearing for the appellant husband, assailing the impugned order, submitted that the marriage between the appellant and the respondent was solemnised on 22.01.1999 at Paduka Kalyana Mandapam, Alwarpet, Chennai, as per the Hindu customs and traditions with the blessings of their parents and other elders of the family and out of their lawful

wedlock, they were blessed with a male child named 'Ashwath Sudarsan' on 29.01.2001 and he is now studying B.E. (Computer Science) III year in S.R.M. College. Learned counsel appearing for the appellant further submitted that at the time of marriage, the appellant was employed in the Air Force as Sergeant and then posted in the Air Force Station at Salau, Kharagpur in West Bengal. While so, due to some problems faced by the appellant in the Air Force, they came down to Chennai leaving the service by taking voluntary retirement. Although there were constant quarrels on silly issues between the appellant and the respondent, the appellant had full hope that the things would improve on the passage of time, but, after they left for Chennai in the year 2016, the respondent wife moved out of the matrimonial house on 03.11.2016. Thereafter, she filed O.P. No.641 of 2017 under Section 13(1)(i-a) of the Hindu Marriage Act 1955 seeking dissolution of marriage before the I Additional Family Court, Chennai and in the said O.P., she has also filed I.A. No.3544 of 2017 seeking interim maintenance. Since the I Additional Principal Judge, Chennai, partly allowing the above I.A. filed by the respondent, directed the appellant to pay a sum of Rs.10,000/- per month to the respondent towards interim maintenance, the appellant is before this Court with this appeal.

3.Learned counsel appearing for the appellant further submitted that the respondent wife, being an M.B.A. Graduate, had served as a Team Lead at Sundaram BNP Paribas Fund Services and earned a sum of Rs.80,000/- per month, but, without mentioning all these facts, she has simply filed the above I.A. seeking interim maintenance stating that she is getting only meagre income. In support of her submission, learned counsel appearing for the appellant brought to our notice the relieving letter dated 15.12.2017 addressed by the Sundaram BNP Paribas Fund Services to the respondent wife stating that the respondent had served in the said Company from 29.09.2014 to 15.12.2017 as Team Lead. Taking support from the additional counter affidavit dated 04.10.2018 filed by the appellant in I.A. No.3544 of 2017 in O.P. No.641 of 2017, the learned counsel appearing for the appellant submitted that after retirement from the Sundaram BNP Paribas Fund Services, the respondent has been working as a Manager in HDFC Capital and earning a sum of Rs.70,000/- per month.

4.Opposing the grant of interim maintenance, learned counsel appearing for the appellant, brought to our notice Section 24 of the Hindu Marriage Act, which states that where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the

wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and income of the respondent, it may seem to the Court to be reasonable, therefore, the application for payment of maintenance ought not to have been ordered against the appellant. Since the respondent wife has not denied her employment by filing any reply to the additional counter, ignoring the vital aspect, the Family Court has directed the appellant to pay a sum of Rs.10,000/- towards interim maintenance, which is unjust and unfair.

5.Learned counsel appearing for the appellant, assailing the moral turpitude of the respondent, pleaded that when she has initiated the matrimonial proceedings in O.P. No.641 of 2017 under Section 13(1)(i-a) of the Hindu Marriage Act 1955 and in I.A. No.3544 of 2017 in O.P. No.641 of 2017 under Section 24 of the Hindu Marriage Act before the Family Court, she has stated various false grounds against the appellant. To substantiate her case, listing out three falsehoods pleaded by the respondent before the Family Court for obtaining wrong order of interim maintenance of Rs.10,000/-, learned counsel appearing for the appellant, with regard to the first falsehood, submitted that when the relieving letter dated 15.12.2017 issued by the Sundaram BNP Paribas Fund Services speaks clearly about the employment of the respondent in the said company to the effect that she was employed as a Team Lead, the respondent, who is a responsible officer, conveniently, in an effort to derail the notice of the Court, has stated in her Interim Application seeking maintenance that she is getting only meagre income, though she has been working as a Manager in HDFC Capital and earning a sum of Rs.70,000/- per month, after her retirement in the Sundaram BNP Paribas Fund Services. Therefore, the appellant has filed Additional Counter Affidavit dated 04.10.2018 in the above I.A. No.3544 of 2017 in O.P. No.641 of 2017 before the I Additional Family Court, Chennai stating that the respondent has been working as a Manager in HDFC Capital and earning a sum of Rs.70,000/- per month, but, the respondent wife has not even come forward to deny the same by filing any reply affidavit.

6.Learned counsel appearing for the appellant further submitted that as per Order VIII Rule 5 of the Civil Procedure Code, if any allegation or fact is not denied, the same shall be stated to be admitted. Similarly, it is a settled legal position as per Section 58 of the Evidence Act, no fact need to be proved, for which, the parties thereto agreed at the time of hearing. In the present case, when the appellant has specifically filed an Additional Counter Affidavit dated 04.10.2018 to bring the notice of the Family Court about the prevailing facts of her employment stating that she is working

in HDFC Capital and earning Rs.70,000/- per month, the same has not been denied by her. Therefore, this crucial aspect has not been considered by the Family Court.

7.In respect of the second falsehood, learned counsel appearing for the appellant further submitted that when the respondent stated in her application that she is getting only a meagre income, she ought to have mentioned about her employment and the monthly salary, but, the same has been completely concealed. Since the Statement of Accounts in the HDFC Bank shows that the respondent wife was paid with the monthly salary of Rs.39,231/-, Rs.35,585/-, Rs.47,644/-, Rs.39,029/-, Rs.37,983/-, Rs.48,290/-, Rs.38,142/-, Rs.36,932/-, Rs.36,680/-, Rs.39,542/- from January 2015 to October 2015, the same has been brought to the knowledge of the Family Court by filing additional counter affidavit stating about her employment and the monthly salary, but, the Family Court, without considering the same, has directed the appellant to pay interim maintenance to the respondent. When Section 24 of the Hindu Marriage Act clearly emphasises that the better employed parties, not to request for maintenance because they are getting independent income sufficient for her or his support, the Family Court ought to have disallowed the application filed by the respondent seeking interim maintenance.

8.With regard to the third falsehood, learned counsel appearing for the appellant submitted that in the above application, the respondent wife has stated that her son is living along with her, which is factually incorrect. When her son, presently pursuing B.E. (Computer Science) in S.R.M. College, Chennai, has been staying with the appellant, the respondent ought not to have mentioned that she is struggling to meet out the expenses of her son. Therefore, all these cumulative falsehoods would show that the respondent has come to the Court with uncleaned hands.

9.In support of her submissions, learned counsel appearing for the appellant, referring to Section 24 of the Hindu Marriage Act, produced the judgment of the Delhi High Court in the case of Rupali Gupta vs. Rajat Gupta and the Order dated 21.02.2003 passed by this Court reported in AIR 2003 Mad 212 in the case of Manokaran @ Ramamoorthy vs. M.Devaki holding that for grant of maintenance pendente lite, the party should not have sufficient independent income for her/his support. Hence, the impugned order is not sustainable in law as per Section 24 of the Hindu Marriage Act.

10.Concluding her argument, learned counsel appearing for the appellant submitted that the respondent, who has not chosen to appear before this Court, has not even appeared before the

Family Court and as a result, the Family Court is not willing to take up the matter, although Original Petitions filed in the years 2018 and 2019 are taken up for Trial.

11. Heard the learned counsel for the appellant. Since in the earlier hearing, viz. on 20.04.2021, neither the respondent nor the learned counsel for the respondent was present, this Court given an opportunity to the respondent to defend her case either virtually or physically. We have also on the last hearing, noticing the absence of the respondent, has directed the registry to post the matter today, so as to enable her to argue the case. Even today, there is no representation on her behalf either through counsel or by herself.

12. Admittedly, in the present case, both the appellant and the respondent are employed. Due to some matrimonial disputes, the respondent wife filed Original Petition in O.P. No.641 of 2017 seeking dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act 1955. Thereafter, when she moved I.A. No.3544 of 2017 before the Family Court under Section 24 of the Hindu Marriage Act seeking maintenance, the appellant has filed counter affidavit and additional counter affidavit opposing the prayer for maintenance.

13. A perusal of the counter affidavit dated 12.12.2017 filed by the appellant shows that the respondent is an M.B.A. Graduate and she has served as a Team Manager at Sundaram BNP Paribas Fund Services and earned a sum of Rs.80,000/- per month. However, the appellant has also filed a relieving letter dated 15.12.2017 issued by the Sundaram BNP Paribas Fund Services to the respondent wife, in which, it has been stated as follows:

'This has reference to your letter of resignation dated September 27, 2017.

We would like to inform you that your resignation is accepted and we thank you for the services rendered during the period of your employment with us between September 29, 2014 and December 15, 2017.'

14. A perusal of the above letter shows that the respondent wife had served in Sundaram BNP Paribas Fund Services as Team Lead from 29.09.2014 to 15.12.2017 and had given her resignation letter on 27.09.2017. Moreover, the Statement of Accounts in the HDFC Bank shows that the respondent wife was paid with the monthly salary of Rs.39,231/-, Rs.35,585/-, Rs.47,644/-, Rs.39,029/-, Rs.37,983/-, Rs.48,290/-, Rs.38,142/-, Rs.36,932/-, Rs.36,680/-, Rs.39,542/- from January 2015 to October 2015. However, the additional counter affidavit dated 04.10.2018 filed by the appellant shows that the respondent is working as Manager in HDFC Capital and earning a sum of Rs.70,000/- per month. In

spite of the same, the respondent has not come forward to file any reply affidavit denying the averments made by the appellant. Therefore, as canvassed by the learned counsel appearing for the appellant, when a specific pleading has been made by the appellant by filing an additional counter affidavit dated 04.10.2018 stating that the respondent is working as Manager in HDFC Capital and earning a sum of Rs.70,000/- per month, the respondent, who sought for payment of maintenance from the appellant, should have filed a reply affidavit denying the same, but, she has not come forward to do so. In this regard, Order VIII Rule 5 of C.P.C. would come into operation and the same reads as under:

'5. Specific denial - (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.'

15.A perusal of the said provision shows that the allegation of fact in the plaint, if not denied specifically, the same shall be taken to be admitted. In the present case, when the Court has given summons to the respondent, it is not known why she has not come back to the Court to deny the averments made in the additional counter affidavit filed by the appellant. Therefore, the facts admitted as per Section 58 of the Evidence Act need not be proved. In this regard, it is relevant to refer Section 58 of the Evidence Act as under:

'58. Facts admitted need not be proved - No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.'

16.A perusal of the above provision shows that the admitted facts need not be proved and in such circumstances, the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission. As such, when the counsel for the appellant has made out the case that the respondent has been working in HDFC Capital as Manager with monthly salary of Rs.70,000/- per month, it has not been denied by the respondent.

While considering the similar and identical issue, this Court in the case of Manokaran @ Ramamoorthy vs. M.Devaki reported in AIR 2003 Mad 212 has held thus:

"24.Maintenance pendente lite and expenses of proceedings- Where in any proceedings under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

The above provision would show that for grant of maintenance pendente lite, the party should not have sufficient independent income for her/his support. In other words, if it is found that the applicant has found sufficient income for his/her support, no amount can be allowed as maintenance pendente lite as per Section 24 of the Act.'

17.A careful reading of the above shows that for grant of maintenance pendente lite, the party should not have sufficient independent income for her/his support. In other words, if it is found that the applicant has found sufficient income for his/her support, no amount can be allowed as maintenance pendente lite as per Section 24 of the Act.

18.Secondly, in the matter of payment of interim maintenance, Section 24 of the Hindu Marriage Act reads as under:

'Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and income of the respondent, it may seem to the Court to be reasonable.'

19.In the present case, as we have highlighted above, when the appellant has specifically filed an additional counter affidavit narrating the fact that the respondent is working as Manager in HDFC Capital and earning a sum of Rs.70,000/- per month, it has not been specifically denied or refuted by the

respondent, who sought for maintenance.

20.The Delhi High Court in the case of Rupali Gupta vs. Rajat Gupta, by judgment dated 05.09.2016, also while dealing with Section 24 of the Hindu Marriage Act, has held thus:

'13.The Supreme Court in the case reported as (2000) 4 SCC 266 Padmja Sharma vs. Ratan Lal Sharma has dealt with the issue of maintenance and obligation of the mother having the earning capacity to maintain the children. The relevant discussion appears in para No.10 which is extracted hereunder:-

Maintenance has not been defined in the Act or between the parents whose duty it is to maintain the children. Hindu Marriage Act, 1955, Hindu Minority and Guardianship Act, 1956, Hindu Adoptions and Maintenance Act, 1956 and Hindu Succession Act, 1956 constitute a law in a coded form for the Hindus. Unless there is anything repugnant to the context definition of a particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision. All these Act are to be read in conjunction with one another and interpreted accordingly. We can, therefore, go to Hindu Adoption and Maintenance Act, 1956 (for short the 'Maintenance Act') to understand the meaning of the 'maintenance'. In clause (b) of Section 3 of this Act "maintenance includes (i) in all cases, provisions for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage" and under clause (c) "minor means a person who has not completed his or her age of eighteen years". Under Section 18 of the Maintenance Act a Hindu wife shall be entitled to be maintained by her husband during her life time. This is of course subject to certain conditions with which we are not concerned. Section 20 provides for maintenance of children and aged parents. Under this Section a Hindu is bound, during his or her life time, to maintain his or her children. A minor child so long as he is minor can claim maintenance from his or her father or mother. Section 20 is, therefore to be contrasted with Section 18. Under this Section it is as much the obligation of the father to maintain a minor child as that of the mother. It is not the law that how affluent mother may be it is the obligation only of the father to maintain the minor.'

21.While the above observation of the Delhi High Court and this Court will squarely apply to this case and Section 24 of

the Hindu Marriage Act clearly emphasises that the better employed parties, not to request for maintenance because they are getting independent income sufficient for her or his support, we are of the view that the respondent is not entitled to get interim maintenance from the appellant. Finding no justification in the order granting interim maintenance, we are inclined to allow this appeal. Accordingly, the impugned order is set aside and the appeal stands allowed. Consequently, C.M.P. No.20868 of 2021 is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vga

To

1. The I Additional Principal Judge,
Family Court, Chennai.

Copy To

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

C.M.A.No.3630 of 2019
and C.M.P. No.20868 of 2019

BR(CO)
PM/10/05/2022