

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.09.2022

PRONOUNCED ON : 18.10.2022

CORAM :
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.1817 of 2022

and

C.M.P.No.13049 of 2022

Jyothi Sunder Rajan

... Appellant

Vs.

Krishnan Bhalaji

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, praying to set aside the fair order and decretal order dated 29.06.2022 passed in I.A.No.3 of 2022 in O.P.No.4122 of 2019, on the file of the learned Principal Judge, Family Court, Chennai.

For Appellant : Ms.S.P.Arthi

For Respondent : Mrs.Sheila Jayaprakash

JUDGMENT

(Judgement of the Court was made by S.SOUNTHAR.J.,)

Aggrieved by the quantum of interim maintenance granted by the Family Court, the appellant/wife has come up with this Civil Miscellaneous Appeal.

2. The respondent/husband filed a petition for divorce on the ground of cruelty against the appellant/wife in O.P.No.4122 of 2019 before the Family Court, Chennai. The appellant/wife filed I.A.No.3 of 2022 seeking interim maintenance of Rs.75,000/- per month under Section 24 of Hindu Marriage Act, 1955. The learned Family Court granted interim maintenance of Rs.25,000/- per month and aggrieved by the quantum of interim maintenance, the appellant/wife is before this Court by way of this appeal.

3. The appellant/wife in her affidavit filed in support of the petition for interim maintenance averred that she was a B.Sc., graduate and currently self employed as a music teacher, earning a sum of Rs.45,000/- per month. She further averred that the respondent was a B.E. (Chemical Engineering) graduate and he also acquired Master's Degree in Economics, both from BITS

Pilani and was employed at WJ Towell Engineering, Muscat as General Manager (drilling) till December, 2019 and was earning Rs.5,00,000/- per month. She also claimed that she was living with her small child aged about 8 years. She prayed for interim maintenance of Rs.75,000/- per month, to meet her personal expenses towards rent, child education, extra curricular activities, food and other expenses.

4. The respondent/husband filed counter, wherein he claimed that his company was not doing well and he was on half salary from 22.10.2019. He further claimed that the appellant herein had communication with his boss at Muscat and ruined his reputation. He asserted that he resigned his job on 01.08.2021 and returned to India. He also claimed that his mother was 82 years old and suffering from cervical cancer and currently on radiation treatment. Therefore, he prayed for dismissal of I.A.No.3 of 2022 filed by the appellant/wife.

5. Both the parties filed their affidavits of assets and liabilities and based

on the pleadings of the parties, the assets and liabilities, the Family Court fixed the interim maintenance of Rs.25,000/- per month.

6. Assailing the quantum of interim maintenance fixed by the Family Court, the learned counsel for the appellant submitted that the perusal of the affidavit of assets and liabilities filed by the respondent/husband would suggest that the respondent/husband had transaction to the tune of Rs.10,985,726/- on 24.01.2019 in his HDFC Bank Account and considering the heavy transaction found in the account of the respondent/husband, the interim maintenance of Rs.25,000/- per month awarded by the Family Court is not commensurate with the financial status of the respondent/husband.

7. The learned counsel for the appellant by referring to the observations of the Hon'ble Apex Court in ***Rajnish vs. Neha*** reported in ***(2021) 2 SCC 324*** submitted that the quantum of interim maintenance fixed by the Court below should be sufficient to enable the wife to maintain the very same standard of living as she was accustomed to live in her matrimonial home. Therefore, according to the learned counsel for the appellant, the quantum of interim

maintenance awarded by the Family Court is liable to be enhanced.

8. The learned counsel for the respondent/husband submitted that though the respondent is a well qualified Chemical Engineer, due to the adverse communication of the appellant to the employer of the respondent, his reputation got damaged and ultimately resulted in his resignation from his job. The learned counsel submitted that at present the respondent/husband has returned to India and unemployed. Considering the current circumstances and present income of the respondent/husband, the interim maintenance awarded by the Family Court is just and reasonable. The learned counsel further submitted that the wife herself admitted in her affidavit that she was getting a monthly income of Rs.45,000/-. The learned counsel by taking into consideration the bank account statement of the appellant's, submitted that the appellant periodically received deposits under the head of rent to the tune of Rs.17,000/- per month and the same has been suppressed by her in her affidavit.

9. We have considered the submissions made by both the counsel for the

appellant and the respondent and also perused the pleadings and affidavits of assets and liabilities filed by the parties.

10. On the basis of contentions of counsel the following point is arising for consideration in this appeal.

(a) Whether quantum of interim maintenance fixed by Family Court is justified in law or not?

11. The appellant/wife in her affidavit admitted that she is getting an income of Rs.45,000/- per month by taking music class. The Service Certificate dated 30.11.2021 issued by the employer of the respondent filed along with his affidavit of assets and liabilities make it clear that the husband resigned his job on 30.11.2021.

12. As per the said certificate, his last drawn salary was Rs.1822 RIALS, which is equivalent to Rs.3,46,180/- per month at the rate of Rs.190 per RIALS. If the last drawn salary of the respondent/husband is taken as a guiding factor, 25% of the same would be Rs.86,545/-. The said amount can be

fixed as interim maintenance after deducting Rs.45,000/-, which is the admitted earnings of the appellant/wife. But however, as on today, as per the affidavit of assets and liabilities filed by the respondent, he is not employed and he has returned to India and looking for job. He is a well qualified B.E. (Chemical Engineering) graduate having acquired the same from BITS Pilani. Therefore, there is every likelihood of respondent getting good employment with fanciful salary in future.

13. In view of the assertion made by the respondent, he resigned his job, which is also substantiated by the certificate issued by his employer, we deem it appropriate to take 50% of his last drawn salary as his notional income for the purpose of determining the quantum of interim maintenance.

14. In such case, his notional income would be Rs.1,73,090/-, which is 50% of his last drawn salary. As per the decision of the Hon'ble Apex Court in ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy*** reported in ***2017 (3) CTC 209***, 25% of the husband's income may be fixed as a reasonable interim maintenance. Therefore, in the case on hand, the interim maintenance

payable to the appellant may be fixed at Rs.43,272/- per month. However, in the case on hand, admittedly, the appellant/wife is earning a monthly income of Rs.45,000/- per month. Taking into consideration of the said factor, the Family Court fixed the interim maintenance payable by the husband at Rs.25,000/- per month.

15. Therefore, we come to the conclusion that the quantum of interim maintenance fixed by the Family Court is correct and it requires no interference. Therefore, the Civil Miscellaneous Appeal is dismissed by confirming the quantum of interim maintenance fixed by the Family Court. Consequently, the connected civil miscellaneous petition is closed. In the facts and circumstances of the case, there shall be no order as to costs.

(V.M.V.J) (S.S.J)
18.10.2022

Index : Yes / No
Speaking Order : Yes / No
dm

To

The Principal Judge,
Family Court, Chennai.

C.M.A.No.1817 of 2022

V.M.VELUMANI, J.
and
S.SOUNTHAR, J.

dm

Pre-delivery order made in
C.M.A.No.1817 of 2022

18.10.2022

