

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL No.172 of 2015

JUDGMENT: (Per Hon'ble Dr.Justice Shameem Akther)

This appeal, under Section 19 of the Family Courts Act, 1984, is filed by the appellant/plaintiff/wife, challenging the judgment and decree dated 05.03.2013 passed in O.S.No.46 of 2004 by the learned Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad, wherein the subject suit filed by the appellant/plaintiff/wife against the respondent/defendant/husband, under Section 18 of Hindu Adoptions and Maintenance Act, 1956, claiming maintenance of Rs.10,000/- per month and also arrears of maintenance from 14.03.2002 to 14.03.2004 @ Rs.10,000/- per month, was decreed by the Court below, awarding monthly maintenance of Rs.6,000/- (Rupees six thousand only) to the appellant towards maintenance from the date of impugned judgment with proportionate costs and the respondent was directed to pay the maintenance to the appellant on or before 10th of every calendar month.

2. Heard Smt. A.Deepthi, learned counsel for the appellant and perused the record.

3. No representation for the respondent.

4. The learned counsel for the appellant would contend that though there is substantial evidence to prove that the respondent was working as Engineer and earning upto Rs.30,000/- per month, the Court below erroneously granted meager amount of Rs.6,000/- towards maintenance to the appellant, which is insufficient. It is further contended that the Court below ought to have granted maintenance to the appellant during the pendency of the subject suit also and ultimately prayed to allow the appeal and enhance the monthly maintenance to Rs.10,000/-, as claimed by the appellant.

5. As seen from the material placed on record, the marriage between the appellant/wife and the respondent/husband was performed on 12.12.1984 as per the customs prevailing in Hindu community. There are allegations that at the time of marriage, parents of appellant gave lot of dowry and other household articles to the respondent. Those are immaterial for determination of this appeal.

6. The question that needs to be answered in this appeal is, whether the Court below is justified in granting maintenance of Rs.6,000/- per month to the appellant from the date of impugned judgment or it needs enhancement, as claimed by the appellant. On behalf of appellant/plaintiff, she herself was examined as PW.1 and got marked Ex.A.1-certified copy of order dated 07.08.2003 passed in O.P.No.124 of 2002 by the learned Judge, Family Court, Hyderabad, wherein the O.P filed by the respondent herein seeking dissolution of marriage, was dismissed. On behalf of respondent/defendant, he himself was examined as RW.1 and got marked Ex.B.1-certified copy of legal notice dated 30.08.1999 got issued by the defendant through his advocate to the plaintiff, Ex.B.2-certified copy of legal notice dated 05.11.1999 got issued by the defendant through his advocate to the plaintiff, Ex.B.3-certified copy of reply notice dated 26.11.1999 got issued by the plaintiff to the defendant, Ex.B.4-certified copy of plaint in O.S.No.1175 of 1999 on the file of II Junior Civil Judge, City Civil Court, Hyderabad, filed by one Satyanarayana Rao, against the plaintiff and defendant herein, Ex.B.5-certified copy of the written statement in O.S.No.1175 of 1999 filed by the second defendant therein and Ex.B.6-certified copy of judgment in S.C.No.329 of 1999 on the file of Assistant Sessions Judge, at Asifabad. The dispute is only with regard to the quantum of

maintenance granted to the appellant/wife. Admittedly, no single document is filed on behalf of the appellant to establish that the respondent is earning Rs.30,000/- per month. However, the respondent admitted that he gets income of Rs.15,000/- per month. The Court below was of the view that it is the bounden duty of the respondent to maintain his wife, who has no source of income of her own and was pleased to grant Rs.6,000/- per month towards maintenance to the appellant. Thus the Court below was pleased to grant monthly maintenance of Rs.6,000/- to the appellant from the date of impugned judgment i.e, 05.03.2013. Except the self-serving statement of appellant/PW.1, which cannot be given much credibility, there is no single document to establish that the respondent was earning Rs.30,000/- per month and also there is no cogent and convincing oral evidence on record to hold that the income of the respondent was Rs.30,000/- per month. The Court below having analyzed the entire oral and documentary evidence on record, rightly granted maintenance of Rs.6,000/- per month to the appellant. Under these circumstances, it cannot be held that the monthly maintenance of Rs.6,000/- granted to the appellant is meager and the appellant is entitled for enhancement.

7. Sofaras as arrears of maintenance claimed by the appellant is concerned, it is evident from the record that during the pendency of

the suit, the respondent paid an amount of Rs.1,00,000/- to the appellant to set aside the *ex parte* decree passed against him. The Court below assigning number of reasons rightly declined to grant arrears of maintenance to the appellant. In the facts and circumstances of the case, the amount of Rs.1,00,000/- paid by the respondent to the appellant during the pendency of the subject suit to set aside the *ex parte* decree against him shall be adjusted towards maintenance amount payable to the appellant during the pendency of the subject suit.

8. In view of the above circumstances, there are no grounds to interfere with the impugned judgment and decree dated 05.03.2013 passed by the Court below. This appeal is devoid of merits and is liable to be dismissed.

9. Accordingly, this Family Court Appeal is dismissed.

Miscellaneous petitions, pending if any, in this appeal, shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 10.10.2022
SCS