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C.M.A.No.1835 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**C.M.A.No.1835 of 2022
and C.M.A.Nos.13262 & 13264 of 2022**

R.Dinesh Rao ... Appellant

-Vs-

M.Haritha ... Respondent

Prayer : Civil Miscellaneous Appeal under Section 19 of the Family Courts Act, 1984 against the order dated 13.07.2022 passed in I.A.No.4 of 2021 in O.P.No.3590 of 2019 on the file of the Principal Family Court, Chennai.

For Appellant : Mr.I.Abrar Md Abdullah

For Respondent : Mrs.K.Sumathi

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This Civil Miscellaneous Appeal has been directed against the order dated 13.07.2022 passed by the Principal Judge, Principal Family Court at Chennai in I.A.No.4 of 2021 in O.P.No.3590 of 2019.



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2. Before the Court below, the appellant herein filed O.P.No.3590 of 2019 for restitution of conjugal rights against the respondent herein. In the said O.P., the respondent wife filed I.A.No.4 of 2021 under Section 24 of the Hindu Marriage Act seeking for interim maintenance of Rs.35,000/- per month and also Rs.50,000/- towards litigation expenses.

3. The said I.A., was decided by the Court below by order dated 13.07.2022 under which the Court has partly allowed the said petition by giving a direction to the respondent husband to pay a sum of Rs.25,000/- to the petitioner wife towards interim maintenance from the date of the petition till the date of disposal of the main petition. The Court also directed that the arrears shall be cleared within two months from the date of the order and the interim maintenance directed by the Court shall be continued to be paid by the husband to the wife on or before 10th of every English calendar month without fail. The Court also directed the husband to pay Rs.50,000/- as one time payment towards litigation expenses. Aggrieved over the said order, the husband preferred the present appeal.

4. Heard Mr.I.Abrar Md. Abdulla, learned counsel for the appellant husband, who would submit that, the respondent wife is a qualified software engineer, she was working in a reputed company and was earning a respectable salary. At one point of time, since she decided to go abroad for the reason of joining in higher studies, she claimed to have applied for leave on Loss of Pay, but that factor is



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denied by the husband and still according to the learned counsel for the appellant husband, the wife / respondent is an earning member.

5. In support of his contention, the learned counsel for the appellant relied upon the statement of bank accounts of the respondent wife, where he pointed out that, not only the regular salary that she was earning every month from the company where she was working in Chennai, but also during regular intervals some amounts have been deposited. Therefore, the respondent wife was getting money not only from the source of salary but also from other sources and therefore before she left India to United Kingdom (UK) for higher studies, several lakhs of rupees had been deposited in the bank account of the respondent wife. Learned counsel submits that the respondent wife is capable of maintaining herself and hence she is not entitled for maintenance.

6. Learned counsel for the appellant husband also submits that, what are the circumstances under which a wife would be entitled to get interim maintenance under Section 24 of the Act has been dealt with by the Law Courts, where, if the wife is really in a position not to maintain herself to have both ends meet, then only she will be entitled to get interim maintenance and those who are earning members or well qualified or capable of being an earning member, still if such member becomes idle and not venturing into any job for earning, then that would also be one of the reasons for denial of maintenance.



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7. Making these submissions in support of his contention, the learned counsel for the appellant husband has relied upon two decisions of the Delhi High Court. First one is "**Nisha Jain -vs- Amit Jain (2016 SCC Online Del 4866)**", where the learned counsel relied upon the following passage.

"12. The case of the appellant/wife before us is squarely covered by the decision dated March 24, 2000 of Madhya Pradesh High Court reported as 2000 (3) MPLJ 100 Smt. Mamta Jaiswal v. Rajesh Jaiswal wherein the question as to in what way Section 24 of the Act has to be incorporated was answered as under:

'In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendent lite alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse



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by a cut in the nature of pendent lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implanting the provisions of law suitable to their purpose.

13. The appellant/wife before us being highly qualified and experienced in her field, has rightly been denied the benefit of interim maintenance under Section 24 of the Hindu Marriage Act, 1955 as she has not satisfied the criteria laid therein"

8. The next decision which is referred is "K.N. -vs- R.G (2019 SCC Online Del 7704), where the learned counsel relied upon the following passage.

" 12. There is no doubt that the appellant has been working with reputed multinational companies. Her own income affidavit reveals that her net income is approximately Rs. 1 Lac per month. There is no child from the wedlock and she has no other liabilities. Looking at the totality of the facts, we find that this is not the case where the appellant is unable to maintain herself. In fact, the earnings of the appellant are sufficient to maintain herself and give her the required comforts of life. The law on the subject as discernible from some of the judgments mentioned above is clear that when a spouse is qualified and has the capacity to earn, normally, interim maintenance is not to be granted. In a given situation, the courts have been granting some maintenance in a case where there is capacity to earn but some other factors prevent the spouse from earning despite making best efforts. However, in a case like the present, where the



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spouse is qualified and is actually earning, interim maintenance under Section 24 need not be granted. We do not agree with the submission of the appellant that though she is earning a good amount of salary, she should still be given interim maintenance to bring her at par with the lifestyle of the respondent. The provisions of this section are not meant to equalize the income of the wife with that of the husband but are only to see that when divorce or other matrimonial proceedings are filed, either of the party should not suffer because of paucity of source of income and the maintenance is then granted to tie over the litigation expenses and to provide a comfortable life to the spouse. Where, however, both the spouses are earning and have a good salary, merely because there is some salary difference cannot be a reason for seeking maintenance. In the present case, what the appellant seeks is an equalization with the respondent which we are afraid cannot be granted under Section 24."

9. Relying upon these two decisions, he would contend that in the first case as cited supra, the Court has gone to the extent of saying that a spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent lite alimony.

10. Therefore, assuming that at present the wife is not earning, but she is capable of earning as she is well qualified and she can also have a job even in the foreign soil because of her qualification while studying. If that kind of opportunities is not properly utilized by the wife, even then she can be denied the interim alimony



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as has been held by the Delhi High Court in the first judgment.

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He would also submit that in the second judgment, the spouse who was seeking maintenance was an earning member, who was earning approximately Rs.1 lakh per month and therefore there was every justification on the part of the husband to deny such maintenance under Section 24 of the Act, which was also supported and justified by the the decision of the Delhi High Court cited supra.

11. Therefore, citing those two decisions the learned counsel for the appellant husband would contend that, the facts of the present case since would be similar to that of those cases, the principle that has been enunciated in those decisions can very well be applied to the present case. Hence, the respondent wife is not entitled to seek for maintenance and accordingly the order passed by the Court below which is impugned herein directing the husband to pay a sum of Rs.25,000/- as interim maintenance per month to the respondent wife is unjustifiable and erroneous and hence it is liable to be interfered with.

12. Countering the said arguments, Mrs.K.Sumathi, learned counsel appearing for the respondent wife would submit that no doubt the respondent wife is a qualified person and she was in fact working in a reputed company in Chennai and was earning a respectable salary. But, the moment she got an offer of higher studies in a foreign university in U.K., in the end of 2021, she decided to join in the



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course, where she is pursuing the course with the help of the loan she obtained supported by her father and as of now according to the learned counsel appearing for the respondent wife, the respondent wife is not earning anything. Therefore, in order to maintain herself, not for the educational expenses, but at least for her livelihood, she needs a reasonable sum. Therefore, a sum of Rs.35,000/- was sought for as interim maintenance, which was considered by the learned Judge and she allowed only a sum of Rs.25,000/- to be paid by the appellant husband to the respondent wife. Hence, it is a very justifiable order on the part of the learned Judge taking into account of the situation that is faced by the respondent wife. Hence, the said order need not be interfered with.

13. Learned counsel for the respondent also would contend that, out of the combined earning of the husband and wife they purchased a house property at Chennai which has been let in for rent by the appellant husband, out of which a considerable sum which approximately quantified by the respondent wife is Rs.20,000 to Rs.25,000 per month is being earned by the appellant husband of which, the respondent wife is entitled to 50% of the said rental income. Hence, if that amount is deducted the remaining amount out of the earning of the husband if being paid to the wife by way of interim maintenance will be less than Rs.10,000/- to Rs.15,000/-. Therefore, such a meagre sum every month will not cause much difficulty to the appellant husband and hence that aspect also has to be taken note of by this Court while deciding this appeal as to whether the order passed by the



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court below which is impugned herein is justifiable or not. Hence, the learned counsel appearing for the respondent wife seeks the dismissal of this CMA by confirming the order passed by the Court below.

14. We have considered the rival submissions made by the learned counsel appearing for both sides and have perused the materials placed on record.

15. It has been informed by both the learned counsel for the parties that the main O.P., filed by the husband seeking restitution of conjugal rights has already reached the stage of arguments and within a shortest possible time the Court below would complete the trial as well as the arguments and judgment would be delivered. Therefore, if at all any interim arrangement is made by way of the impugned order passed by the Court below, that will only be prevailing till the disposal of the main O.P. Therefore, at this juncture this Court has to see whether the quantum that has been fixed by the Court below by way of interim maintenance ie., Rs.25,000/- per month is justifiable amount or on the higher side.

16. In this context, it is to be noted that a person, to live in a foreign country like U.K., requires more funds because of the money value. Therefore, merely on the basis of the interim maintenance now ordered by the Court below one cannot make both ends meet and lead a comfortable life in pursuing higher studies.



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17. Therefore, for the purpose of completing higher studies or educational expenses, the respondent wife has to be depend upon some other sources, for which she already claimed to have taken loan with the help of her father. Her father also seems to be a pensioner and he is helping his daughter. That is one aspect of the matter.

18. However, that would not *ipso facto* make the appellant husband to seek immunity from paying interim alimony under Section 24 of the Act because, the husband has filed the petition for restitution of conjugal rights. Therefore, he has to live with the respondent wife and it is up to the Court to take a decision on the main O.P., on merits.

19. Be that as it may. As of now the relationship between them is subsisting as husband and wife. The statement of accounts that has been filed before this Court by the appellant husband shows the payment of salary and other amounts deposited in the account of the respondent wife only upto October 2021 and not beyond that. The reason being that, sometime in November or December she applied for long leave with Loss of Pay as claimed by her and she has gone abroad. Thereafter, there has been no proof to show that still the respondent wife is getting any salary or any amount as educational expenses from the employer.

20. Therefore, from the employer's side there has been no support to the



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respondent wife. If at all she needs some source for her higher studies and to pursue her life as a higher education student at U.K., she has to depend upon the loan amount as well as the support of her father. Therefore, that situation has to be taken into account. Hence, we feel that there was justification on the part of the Court below to allow the petition in part for giving direction to the husband to make the payment of interim maintenance.

21. Now the only thing that has to be decided is with regard to the quantum. As we stated supra, even this Rs.25,000/- may not be a good amount or enough amount to lead a comfortable life even as a student at U.K., At the same time, the financial position of the husband also has to be looked into. We have come across that, it was claimed by the appellant husband that out of his salary he has to pay a considerable amount towards loan which he has taken already. That apart, he has to maintain his aged mother for her medical expenses etc., and also he has to lead his life. Therefore, merely because the husband is earning a respectable sum, it cannot be stated that 25% of his total earning or even more can be parted away by him for the purpose of interim maintenance to his wife.

22. Therefore, taking into account all these factual aspects, we feel that the quantum that has been fixed by the lower Court can be modified, the reason being that, insofar as the educational expenses of her higher studies are concerned, this amount is not going to be utilized as she already made arrangement by way of



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getting a loan and also by getting the support of her father. However, for surviving herself, in order to meet both ends meet to the minimum extent, support must come from the husband. To that extent, we feel that a sum of Rs.17,500/- (Rupees Seventeen Thousand and Five Hundred Only) would be a reasonable and optimum amount which can be parted away by the husband to the respondent wife towards interim maintenance till the disposal of the main O.P.

23. Accordingly, the following orders are passed in this Civil Miscellaneous Appeal.

- (a) That the impugned order dated 13.07.2022 passed in I.A.No.4 of 2021 in O.P.No.3590 of 2019 on the file of the Principal Family Court at Chennai is modified to the extent that the interim maintenance shall be **Rs.17,500/-** (Rupees Seventeen Thousand and Five Hundred Only) per month which shall be paid by the appellant husband to the respondent wife till the disposal of the main O.P.
- (b) Accordingly, as per the modified amount, the arrears of maintenance shall be calculated and be paid by the appellant husband to the respondent wife within a period of one month from the date of receipt of a copy of this order.
- (c) The time limit of one month granted to the appellant husband to make the payment as indicated above shall be strictly followed and the Court below also shall ensure that such payment is made within the time stipulated. It is made clear that out of the arrears to be



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calculated and paid as indicated above, the amount already paid by the appellant husband shall be deducted and the remaining amount shall be paid as stated supra.

(d) Since the main O.P., has already reached the stage of arguments, we hereby direct the Court below ie., Principal Family Court at Chennai to decide the main O.P., in O.P.No.3590 of 2019 and pass final orders on or before **31.01.2024**.

(e) We have not interfered with the order passed by the Court below with regard to the litigation expenses and therefore the said amount of Rs.50,000/- towards litigation expenses also shall be paid by the appellant husband to the respondent wife within a period of one month.

24. With the above directions, this Civil Miscellaneous Appeal is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (G.A.M.,J.)
07.12.2023

Index : Yes/No
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Note : Issue order copy on 08.12.2023

To

The Principal Judge, Principal Family Court, Chennai.



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R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

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