

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

AND

HON'BLE SMT JUSTICE M.G. PRIYADARSINI

F.C.A.No.271 of 2011

JUDGMENT: *(Per Hon'ble Dr. Justice Chillakur Sumalatha)*

Heard Sri S. Viplav Simha Reddy, learned counsel who argued on behalf of Sri Vivek Jain, learned counsel on record for the appellant as well as Sri E. Phani Kumar, learned counsel appearing for respondent Nos.1 and 2.

2. Challenge in this Family Court appeal is the order that is rendered by the Family Court, Secunderabad in F.C.O.P.No.244 of 2009 dated 06.08.2011.

3. The 1st respondent-wife and the 2nd respondent-minor child moved an application seeking various reliefs including grant of maintenance against the appellant-husband. The Family Court putting evidence of PWs-1 and 2 and Exs.A1 to A25 to scrutiny came to a conclusion that though the respondent Nos.1 and 2 are not entitled to other reliefs, so far as maintenance is concerned, they are entitled to maintenance.

4. The respondents claimed a sum of Rs.2,00,000/- per month towards maintenance. However, the learned Judge of the Family Court awarded maintenance of Rs.45,000/- per month in favour of the 1st respondent and Rs.25,000/- per month in favour of the 2nd respondent and directed the appellant herein to pay the same. A sum of Rs.5,00,000/- was also awarded as past maintenance.

5. Upon hearing, both the learned counsel and on perusal of entire record, the following facts are observed to be undisputed:

- i.** The marriage between the petitioner and the 1st respondent was solemnised on 08.03.2007.
- ii.** While the 1st respondent was carrying pregnancy, she left USA and came to India.
- iii.** The 1st respondent delivered child i.e., the 2nd respondent on 01.02.2008.
- iv.** The paternity of the child is not in dispute.
- v.** The appellant sent a mail to the 1st respondent to take care of the child and also to send photographs of the child.

vi. On 03.01.2009, through Ex.A12 mail, the appellant intimidated the 1st respondent that the concerned authorities of U.S tried to send summons to her in the petition filed by him seeking divorce, however, the same could not be served.

6. Making his submission, learned counsel for the appellant states that the appellant was not at fault at any point of time and he showered love and affection towards the respondents. Learned counsel states that it is the 1st respondent who subjected the appellant to harassment and cruelty and the 1st respondent, who examined herself as PW1 during the course of cross-examination, admitted that she left U.S. without informing the appellant.

7. Learned counsel states that due to the harassment of the 1st respondent and series of cases filed against him, he was compelled to stay at India for considerable period and therefore, he could not earn anything. Learned counsel finally submits that amount awarded towards maintenance is exorbitant and therefore, the same has to be revisited.

8. Opposing the submission thus made by the learned counsel for the appellant, the learned counsel appearing for the respondent Nos.1 and 2 contended that though the 1st respondent was working at U.S.A, due to the harassment of the appellant, she had to leave U.S.A. He states that she took treatment at India and delivered child. Learned counsel submits that the father of the appellant gave complaint to police against the 1st respondent and her family members that they committed offences of cheating etc. and the Calendar Case thus levelled however, ended in acquittal.

9. Learned counsel submits that as of now the 1st respondent is not doing any job and she is taking care of the child. Learned counsel also submits that though the Family Court, Secunderabad, way back in the year 2011, ordered the appellant to pay maintenance, the appellant is always irregular in paying the amount and huge amount fell arrears. Learned counsel states that though an execution petition is filed, notice would not be served upon the appellant as he has not given the correct address

particulars and therefore, the respondents could not get the maintenance amount till now.

10. A perusal of entire record goes to show that basing on the trivial issue i.e., with regard to the concealment of age of the 1st respondent, serious disputes arose between them which ultimately resulted in their separation. As per the version of the appellant, he was under the belief that the 1st respondent was born in the year 1979 and after marriage she came to know that she was indeed born in the year 1972. The fact remains that after they got separated, they are living apart, one at USA and another at India. Admittedly, the child i.e., the 2nd respondent is residing along with the 1st respondent. Though the learned counsel for the appellant contends that the appellant is not earning such huge amount for payment of maintenance of Rs.70,000/- in all, the exact salary that is being drawn by the appellant is not furnished.

11. In the impugned order, learned Judge of the Family Court made an observation that in spite of specific directions, the appellant failed to furnish his employment

and salary particulars. Also, on perusal of the impugned order, it is abundantly clear that learned Judge of the Family Court made an observation about the immovable property possessed by the appellant in India. Learned Judge on taking into consideration the status of both parties and the need for the 1st respondent to take care of the child, has awarded a sum of Rs.45,000/- per month as maintenance for the 1st respondent and Rs.25,000/- per month as maintenance for the 2nd respondent. However, though the appellant, as observed, failed to furnish his salary particulars, it cannot be disputed that the appellant has taken care of the Criminal proceedings that were initiated against him and his family members.

12. In the absence of any substantive material with regard to the income of the appellant, we are of the considered view that awarding Rs.45,000/- per month as maintenance for the 1st respondent is exorbitant. Therefore, we are of the view that the said sum has to be reduced by Rs.10,000/-. The amount awarded towards maintenance of the 1st respondent through orders in F.C.O.P.No.244 of 2009 dated 06.08.2011 is therefore

reduced from Rs.45,000/- per month to Rs.35,000/- per month.

13. We are of the view that the impugned order in all other aspects holds good including the amount awarded towards maintenance of the 2nd respondent.

14. Resultantly, Family Court Appeal is accordingly allowed in part. No order as to costs.

15. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

Date: 06.02.2023
sai

75

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

AND

HON'BLE SMT JUSTICE M.G. PRIYADARSINI

F.C.A.No.271 of 2011

06.02.2023

sai