



C.M.A(MD)No.975 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.975 of 2023
and
C.M.P(MD)No.13622 of 2023

Ashok Kumar

: Appellant

vs.

Iswarya

: Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, against the fair and decreetal order dated 29.05.2023 passed in I.A.No.1 of 2023 in H.M.O.P.No.97 of 2022 on the file of the Family Court, Thanjavur.

For Appellant : Mr.M.P.Senthil
For Respondent : Mr.R.Rajeswaran



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JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Being aggrieved over the award of interim maintenance, the husband has filed this appeal.

2. The marriage between the appellant and respondent was solemnised on 23.06.2013. Alleging that the respondent suffered by Bipolar disorder, due to which, she used to pick up unnecessary quarrel with the appellant frequently and left out of the matrimonial home on her own, the appellant filed divorce petition in HMOP.No.97/2022 on the file of the Family Court, Thanjavur. Pending divorce petition, the respondent/wife filed I.A.No.1 of 2023 in HMOP.No.97/2022 seeking interim maintenance. The Family Court, after hearing both sides by impugned order, has awarded interim maintenance of Rs.20,000/- from the date of divorce petition along with costs of Rs.30,000/- payable by the appellant to the respondent. Aggrieved by the fixation of interim maintenance amount, the husband is on appeal.



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3. Learned counsel for the appellant contended that without considering the fact that the respondent/wife had sufficient means to maintain herself and without considering the delay in seeking interim maintenance, the Family Court has erroneously awarded the exorbitant sum of Rs.20,000/- as monthly maintenance. He further submitted that ignoring the fact that the respondent left the matrimonial home without valid reasons, the Family Court proceeded to award interim maintenance. Thus, he submitted that the impugned order is liable to be set aside.

4. Learned counsel for the respondent submitted that the Family Court considering the cost of living and price index, has awarded Rs. 20,000/- as monthly maintenance along with costs. Further, it is the duty of the husband to maintain his wife and therefore, the learned counsel prayed for dismissal of the appeal.

5. We have heard the learned counsel for the appellant as well as the respondent.



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6. On the allegation of desertion and frequent quarrel, appellant filed divorce petition. Pending that petition, the respondent sought for interim maintenance. The Family Court found that the appellant without furnishing any particulars regarding the properties owned by him, loans, his occupation details and his occupational income, has simply averred that he is earning Rs.67,000/- per month by working as a Facility Manager. Though the bank account statement and salary slip were not produced by the appellant, the Family Court finding that the expenditure stated to have been incurred by the appellant comes around Rs.1,08,700/- and therefore, the appellant would be a person of earning more than Rs. 1,00,000/- per month, awarded Rs.20,000/- per month as interim maintenance along with costs of Rs.30,000/-. In our view, fixation of Rs. 20,000/- as monthly maintenance cannot, at any stretch of imagination, be said to be exorbitant, whereas it is an average amount required for the respondent and her child to meet out their day-to-day expenses. Further, as a husband, the appellant is duty bound to maintain his wife as per law. Therefore, we are not inclined to interfere with the impugned order.



7. It is not out of context to refer to the recent judgment of the

Hon'ble Supreme Court in **Rajnesh v. Neha** reported in (2021) 2 SCC 324, wherein, the Apex Court has laid down comprehensive guidelines to govern payment of maintenance in matrimonial cases which are extracted below:-

The Supreme Court on the issue of payment of interim maintenance directed the following:

1. *The affidavits of Disclosure of Assets and Liabilities shall be filed by both the parties in all maintenance proceedings before the concerned Court as the case may be, throughout the country.*
2. *If any further information is required, the concerned court may pass appropriate orders in respect thereof.*
3. *The income of one party is often not within the knowledge of the other spouse. Hence, the Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.*
4. *If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination.*
5. *The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the Court may consider initiation of proceeding under Section 340 Cr.P.C., and for contempt of Court.*
6. *In case the parties belong to the Economically Weaker Sections ("EWS"), or are living Below the Poverty Line ("BPL"), or are casual labourers, the requirement of filing the Affidavit would be dispensed*



with.

7. The concerned Family Court / District Court / Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

The Supreme Court on the issue of permanent alimony gave the following directions:

1. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.
2. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.
3. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.
4. If there are any trust funds / investments created by any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

The Supreme Court further directed in the judgment the criteria for determining the quantum of maintenance and provided the following factors to be considered by the court:

1. Status of the parties
2. Reasonable needs of the wife and dependent children
3. Whether the applicant is educated and professionally qualified
4. Whether the applicant has any independent source of income
5. Whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home



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6. Whether the applicant was employed prior to her marriage
7. Whether she was working during the subsistence of the marriage
8. Whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family
9. Reasonable costs of litigation for a non-working wife
10. The financial capacity of the husband
11. His actual income
12. The spiraling inflation rates and high costs of living
13. Reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, his liabilities if any.

Further the Supreme Court held that maintenance in all cases will be awarded from the date of filing the application for the maintenance before the concerned court. For enforcement/execution of the orders of maintenance, an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly, Sections 51, 55, 58, 60 read with Order XXI.

8. Record of proceedings shows that this Court by order dated 10.10.2023, has granted interim stay subject to payment of Rs.12,000/- per month. In view of the disposal of the appeal, the appellant is directed to pay the respondent the arrears of maintenance at Rs.20,000/- per month from the date of divorce petition till date along with costs, within a period



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of six weeks from the date of receipt of a copy of this judgment and continue to pay the monthly maintenance as fixed by the Family Court every month till the disposal of the divorce petition filed by him.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.) (K.K.R.K.J.)
22.03.2024

Index :Yes / No
Neutral Citation :Yes / No
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To

1. The Judge,
Family Court,
Thanjavur.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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JUDGMENT MADE IN
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