
(2012) 11 MAD CK 0175

In the Madras High Court

Case No : C.R.P. (PD) (MD) No's. 2017 and 1555 of 2012 and M.P. (MD) No. 1 of 2012 in C.R.P. (PD) (MD) No. 1555 of 2012

K.S. Vijayalakshmi

APPELLANT

Vs

N.S. Ramesh
N.S. Ramesh Vs K.S. Vijayalakshmi

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(ia)(ib), 24

Citation : (2012) 11 MAD CK 0175

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : T.R. Subramanian in C.R.P. PD MDNo. 2017 of 2012 and Mr. R. Subramanian in C.R.P. PD MDNo. 1555 of 2012, for the Appellant; R. Subramanian in C.R.P. (PD) (MD)No. 2017 of 2012 and Mr. T.R. Subramanian in C.R.P. (PD) (MD)No. 1555 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G. Rajasuria

1. C.R.P(PD)(MD) No. 2017 of 2012 has been filed to get enhanced the interim maintenance amount to Rs. 7,000/- per month from Rs. 2,000/- per month, as ordered in the fair and decretal order dated 13.03.2012 passed in I.A.No. 192 of 2008 in H.M.O.P.No. 31 of 2007 on the file of the Family Court, Madurai. C.R.P(PD)(MD) No. 1555 of 2012 has been filed to get set aside the fair and decretal order dated 13.03.2012 passed in I.A.No. 192 of 2008 in H.M.O.P.No. 31 of 2007 on the file of the Family Court, Madurai.

2. The parties are referred to hereunder according to their litigative status before the lower Court.

3. A summation and summarisation of the germane facts absolutely necessary for the disposal of both the Civil Revision Petitions, would run thus:

4(a). The learned Counsel appearing on either side, in unison, would narrate

thus:

The husband - Ramesh filed H.M.O.P.No. 31 of 2007 u/s 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, on the file of the Family Court, Madurai, seeking divorce as against his wife -Vijayalakshmi. The wife filed I.A.No. 192 of 2008 invoking the provisions of Section 24 of the Hindu Marriage Act and seeking interim maintenance and also litigation expenses, whereupon the lower Court awarded interim maintenance at Rs. 2,000/- (Rupees Two Thousand only) per month and a sum of Rs. 3,000/- (Rupees Three Thousand only) as litigation expenses, payable by the husband to the wife.

4. Being aggrieved by and dissatisfied with the same, both the wife and the husband have preferred these two Civil Revision Petitions as set out supra.

5. The learned Counsel for the husband would submit that the wife is earning and in such a case, she is not entitled to interim maintenance, whereas the husband lost his job and there is nothing to show that he is having sufficient financial wherewithal to maintain his wife.

6. Whereas the learned Counsel for the wife, placing reliance on the grounds of revision, would pyramid his arguments by putting forth the facts to the effect that there is no iota or shred of evidence to show that she is incapable to get the interim maintenance from the husband who cannot plead that he is not earning any amount to provide for his wife.

7. The point for consideration is as to whether, the lower Court was justified in fixing a sum of Rs. 2,000/- (Rupees Two Thousand only) per month towards interim maintenance and a sum of Rs. 3,000/- (Rupees Three Thousand only) towards litigation expenses payable by the husband to the wife?

The Point:

8. Trite, the proposition of law is that the husband who is hale and healthy is expected to strain all his nerves to see that he is earning for maintaining himself as well as his dependants. The wife who is incapable to maintain herself, is entitled to maintenance and it would not lie in the mouth of the husband that he lost his job and that he has no source of income; some how or other, the husband has to maintain his wife.

9. Here, the learned Counsel for the wife would appropriately and appositely, correctly and convincingly point out that a sum of Rs. 2,000/- (Rupees Two Thousand only) per month, awarded, is meager and even if that amount is going to be obliterated or modified, then the wife would not be able to contest the matter at all.

10. Whereas the learned Counsel for the husband would implore and entreat that the husband should not be mulcted with such liability which he cannot bear.

11. My discussion supra, would demonstrate and display that the husband cannot plead penury so as to wriggle out of his liability to provide interim maintenance

in the facts and circumstances of the case.

12. The law is also well settled that unless interim maintenance and litigation expenses are provided by the husband to the wife, the entire matrimonial proceedings would get vitiated. There is nothing to indicate that the wife is earning any amount. In such a case, the Court cannot presume or assume that the wife is not entitled to claim interim maintenance.

13. The prayer for enhancement of the interim maintenance would have been justified, had there been clinching evidence concerning the financial wherewithal of the husband.

14. I am fully aware that the wife cannot be driven from pillar to post to gather evidence to prove the financial ability of the husband to provide maintenance to his wife. As such, the Court has to strike a balance between the two.

15. From the available materials, the lower Court being the first Court of facts, *au fait* with law and *au courante* with facts, awarded such interim maintenance and litigation expenses, which cannot be labelled or dubbed either as excessive or very low. Hence, I would like to confirm the order of the lower Court and dismiss both the Civil Revision Petitions. The Point is answered accordingly.

16. In the result, both the Civil Revision Petitions are dismissed. Consequently, the connected Miscellaneous Petition is dismissed. No costs. On hearing the pronouncement of the order of this Court, the learned Counsel for the wife would make an extempore submission that suitable direction might be given to the lower Court to dispose of H.M.O.P.No. 31 of 2007. I could see considerable force in the submission of the learned Counsel for the wife. Accordingly, the lower Court is directed to dispose of H.M.O.P.No. 31 of 2007, within a period of three months from the date of receipt of a copy of this order. Further, he would submit that so far the order passed by the lower Court was not complied with by the husband, for which I would like to point out that it is open for her to press for payment of award before the lower Court and if there is any default committed by the husband, the lower Court shall do well to see that the interim maintenance and the litigation expenses as ordered, are paid to the wife, by resorting to the methods envisaged in the various precedents of this Court.