

Equivalent citations: AIR 2003 Mad 212, I (2003) DMC 799, (2003) 1 MLJ 752

Bench: P Sathasivam

Manokaran @ Ramamoorthy vs M. Devaki on 21/2/2003

ORDER

P. Sathasivam, J.

1. Aggrieved by the order of the Principal Family Court, Madras dated 25-7-2002, made in I.A. No. 1058/2001 in O.P. No. 1310/2000, granting interim maintenance at the rate of Rs.750/- per month and litigation expenses of Rs.1,500/-, the husband has preferred the above Revision under Article 227 of the Constitution.

2. The petitioner/husband has preferred the said O.P. for divorce under Section 13(1)(1a) and (1b) of the Hindu Marriage Act. Pending the said petition, the wife/respondent herein has filed I.A. No. 1058/2001 claiming interim maintenance at the rate of Rs.2,000/- per month and Rs.5,000/- towards litigation expenses under Section 24 of the Hindu Marriage Act. The said application was resisted by the husband stating that she is working in a private concern and drawing a salary of Rs.4,500/- per month. It is also stated that he is earning only Rs.2000/- per month. Before the Family Court, salary certificate of the husband dated 10-6-2002 has been marked as Ex.R-1. Based on Ex.R-1, after finding that he is earning Rs.70/- per day by working in Senthil Auto Garage, the Family Court has concluded that the wife is entitled to interim maintenance at the rate of Rs.750/- per month from the date of petition till the disposal of O.P. and also awarded Rs.1,500/- towards litigation expenses.

3. The only question to be considered in this Revision is whether the wife/respondent herein has made out a case for interim maintenance in terms of Section 24 of the Hindu Marriage Act.

4. Mr. N. Manokaran, learned counsel for the petitioner, after drawing my attention to Section 24 of the said Act and the admission of the wife in the counter statement filed in the main petition viz., O.P. No. 1310/2000, would contend that since she is earning sizeable income and in view of the fact that the petitioner/husband is getting only Rs.2000/- per month, the Family Court has committed an error in granting interim maintenance and litigation expenses.

5. There is no dispute that the petition has been filed by the respondent/wife claiming maintenance pendente lite and expenses of the proceedings under Section 24 of the Hindu Marriage Act. Section 24 reads thus:

"24. Maintenance pendente lite and expenses of proceedings.- Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable."

The above provision would show that for grant of maintenance pendente lite, the party should not have sufficient independent income for her/his support. In other words, if it is found that the applicant has found sufficient income for his/her support, no amount can be allowed as maintenance pendente lite as per Section 24 of the Act. While construing the very same provision in similar circumstance, A.S. Venkatachamoorthy, J., in KUMARESAN v. ASWATHI [(2002) 2 M.L.J. 760 has arrived a similar conclusion. Now I shall consider whether the respondent/wife has any independent income which is sufficient for her survival and for the proceedings. In para 10 of the counter statement filed by the wife in O.P. No. 1310/2000, she herself admitted

that,

.....Now the respondent (wife) had got her present job in private body and running her life with the salary and staying with her brother...". The above statement shows that she is employed in a private concern, getting salary and staying with her brother. In the application for interim maintenance, the husband has filed a counter affidavit wherein he has specifically stated that his wife is drawing a salary of Rs.4,500/- from a private concern. In para 5 of the counter affidavit it is stated that,

"5. The respondent denies all the allegations in para 5 and put the petitioner strict proof of the same. The averment about I am liberally suffering without financial assistants is put to strict proof since this petitioner is working in the organization Kumari Neruvanam at No. 40, Venkat Narayanan Road, T. Nagar, Chennai 600 017, and drawing a salary of Rs.4500/- she also disclosed this before the All Women Police Station, Thousand Lights, and this petitioner also admitted in her counter statement that she is working in private and running her life. But contradictory to her statement in counter statement now this petitioner come forward with a plea that she is without financial assistance. This petitioner is working as typist and main organizer for a programme in Neingalum Pachalar Agalam a programme telecaste in RAJ TV during Sunday 8.00 A.M, from her company Kumari Neruvanam. The averment about that this respondent is owner of the "Venkataswari Turning Works" at Muthumariamman Koil Street, Anna Nagar, Chennai-600 040 is put to strict proof since this respondent is not the owner of the said company and A. Loganathan is the owner of the said Turning works and this respondent is working in Senthil Auto Garage at Annai Sathya Nagar, Anna Nagar (East) Chennai-600 102, and drawing a salary of Rs.2000/- and this respondent need not to give any monetary assistance to the petitioner for her claim."

The above averment shows that the petitioner herein/husband is working in Senthil Auto Garage, Annai Sathya Nagar, Chennai-102 and drawing a salary of Rs.2000/- per month. Likewise, it is also seen that the respondent herein/wife is working in Raj T.V and drawing a salary of Rs.4,500/-. Though the said aspect has not been substantiated, I have already referred to the admission of the respondent herein in her counter statement filed in the main O.P.1310/2000 wherein she admitted that she secured a private job and is getting salary and staying with her brother. On the other hand, it is established particularly from Ex. R-1, the petitioner herein is getting only Rs.70/- per day or Rs.2000/- per month by working in Senthil Auto Garage. I have already referred to the language used in Section 24 which makes it clear that for grant of maintenance pendente lite the party should not have sufficient independent income for her support. In the light of the materials available, particularly the admitted case of the respondent/wife, she is employed in a private Satelite T.V. and earning for her livelihood staying with her brother, it cannot be construed that she is not having sufficient independent income. The Family Court lost its sight to consider the above material aspect.

6. In the light of what is stated above, the impugned order of the Principal Family Court dated 25-7-2002, made in I.A. No. 1058/2001 in O.P. No. 1310/2000 is set aside and the Civil Revision Petition is allowed. No costs. It is made clear that pending the divorce proceedings at any point of time if the applicant/wife establishes that she has no sufficient independent income for her support, it is open to her to claim maintenance pendente lite. Consequently, C.M.P. No. 16264/2002 is closed.