

Ramesh Babu Vs. Tmt. Usha

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Court : Chennai

Decided On : Jan-31-2003

Reported in : AIR2003Mad281; 2003(1)CTC471; I(2004)DMC581;
(2003)1MLJ576

Judge : P. Sathasivam, J.

Acts : Hindu Marriage Act - Sections 12 and 24

Appeal No. : Civil Revision Petition Nos. 2078 and 2089 of 2002 and C.M.P. Nos. 17427 and 17547 of 2002

Appellant : Ramesh Babu;tmt. Usha

Respondent : Tmt. Usha; Ramesh Babu

Advocate for Def. : A. Thiagarajan, Adv. for ;M.V. Venkatasehsan, Adv.

Advocate for Pet/Ap. : S.D. Balaji, Adv.

Judgement :

ORDER

P. Sathasivam, J.

1. Since both the revisions are filed against the very same order of the Family Court, Madurai, they are being disposed of by the following common order.

2. Aggrieved by the order of the Family Court, Madurai dated 23.07.2002 made in I.A.No.225 of 1998 in H.M.O.P.No.5 of 1997, granting interim maintenance at the rate of Rs.1,250/- per month and Rs.2,500/- towards litigation expenses, the husband has preferred CRP.No.2089 of 2002. Against the same order, the wife has preferred CRP.No.2078 of 2002, praying for higher amount towards interim maintenance and litigation expenses.

3. Heard the learned counsel for respective parties.

4. For convenience, I shall refer the husband as petitioner and the wife as respondent.

5. It is seen that the husband by name Ramesh Babu has preferred HMOP.No.5 of 1997 before the Family Court, Madurai under Section 12 of Hindu Marriage Act (in short 'the Act'), for annulment of the marriage, which was held on 05.11.1995 at Madurai, as null and void. The respondent has filed a counter statement disputing various averments made in the petition. Pending the said O.P., the respondent / wife has filed I.A.No.225 of 1998, praying for maintenance at the rate of Rs.8,000/- per month and litigation expenses of Rs.5,000/- under Section 24 of the Act. The said application was resisted by the petitioner by filing a counter statement. Before the Family Court, the wife herself was examined as P.W.1 and marked Exs.P.1 to P.17 in support of her claim for interim maintenance and litigation expenses. The husband himself was examined as R.W.1 and marked Exs.R.1 to R.5 in support of his defence. The Family Court, after considering the materials placed before it and after ascertaining the income and status of the husband as well as the wife, fixed Rs.1,250/- per month as interim maintenance and Rs.2,500/- as litigation expenses.

6. Mr. S.D. Balaji, learned counsel appearing for the husband - petitioner in CRP.2089 of 2002, has raised a only contention that the Family Court is not justified in granting Rs.2,500/- towards litigation expenses. In support of his claim, he relied on the decision of the Gujarat High Court in the case of Kalaben Kalabhat Desai vs . Albhai Karamshibhai Desai reported in :

7. On the other hand, Mr. A. Thiagarajan, learned counsel appearing for the wife - petitioner in CRP.No.2078 of 2002, would contend that in the light of the fact that the husband is working as an Inspector of Customs & Central Excise at Madurai and getting Rs.12,000/- per month as salary and also earning sufficient income from other sources, namely money lending and other business, the Family Court ought to have granted higher amount, as claimed.

8. First, I shall consider the objection regarding grant of litigation expenses. Section 24 of the Act enables either party to claim maintenance pendente lite and expenses for the said proceedings. Section 24 of the Act is as follows.

' 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. '

It is clear that in the proceedings initiated under the provisions of the Hindu Marriage Act, if there is no independent income sufficient for support and for the expenses of the proceeding, either the wife or the husband can file an application under Section 24 of the Act for interim maintenance, pending disposal of the main petition and also for expenses of the proceeding. Before considering the said application, it is incumbent on the part of the Court to ascertain the petitioner's own income and the income of the respondent and pass reasonable order, directing to pay the same. Section 24 of the Act enables the parties of the proceeding not only for interim maintenance, but also for expenses of the proceeding. In : (cited supra), the learned single Judge, after holding that the petitioner therein, namely wife can avail free legal aid, rejected her claim for litigation expenses. Learned counsel appearing for the petitioner has very much pressed into service the following conclusion of the learned Judge.

'7. So far as the claim of the petitioner of litigation expenses is concerned, I do not find any merits therein. The petitioner is entitled for free legal aid. She should have approached to the authority concerned for free legal services. Merely because she was not knowing of her this right or it was not being made known to her by the Advocate, this burden cannot be put on the shoulder of the husband. It was the duty of the Advocate when she approached to him to let her know that she is entitled for free legal services. It is not done in trial Court as well as in this Court also, which is clearly borne out from the fact here also she is appearing through a paid Advocate. In this Court also, the Advocate should have made known to her that she is entitled to free legal services. It is unfortunate that this programme of free legal services is not successful to the extent to what it should have been because of this non-co-operative attitude of the members of the Bar. The judicial officers are also equally responsible for this class of litigants. In each case where a woman or child is a party, it is equally a duty of the judicial officer concerned to let them know that they are entitled for free legal aid. Be that as it may. It is still open to the petitioner to approach to the authority concerned before the trial Court and get free legal aid. '

9. Though free legal aid is available, more particularly in our State, I am of the view that on this ground the claim of the deserving person can not be rejected or non-suited when the statutory provision enables the parties to the said proceeding can apply for interim maintenance as well as litigation expenses. I have already referred to the conditions to be satisfied before passing an order under Section 24 of the Act. If there is sufficient evidence to show that the party who avails the said provision is having sufficient income, he or she cannot claim maintenance as well as litigation expenses. In the light of the statutory provision and in view of the assertion made by the wife that she has no source of income and she is depending on the meager interim maintenance amount of Rs.400/- per month as ordered earlier, which according to her is insufficient for her maintenance, I am unable to share the view expressed by the learned Judge and I hold that Section 24 of the Act as it stands and continues in the statute book, parties to the proceeding are entitled to avail the same, subject to satisfying the condition therein. It is needless to mention that it is the duty of the Court to consider the petitioner's own income and the income of the other side and the amount to be

awarded which has to be reasonable. In our case, the Family Court has granted Rs.2,500/- as litigation expenses. In this regard, it is to be noted that the OP., filed by the petitioner - husband in the year 1997 is still pending and the respondent - wife has to attend all the hearings and also seek legal assistance. Accordingly, the amount of Rs.2,500/- awarded towards litigation expenses is quite reasonable and acceptable, I reject the only contention raised by Mr. S.D. Balaji, learned counsel for the petitioner.

10. Coming to the contention of Mr. A. Thiagarajan, learned counsel for the respondent - wife, that the interim maintenance awarded is very low, it is seen from Ex.P.1 dated 21.07.2000 - pay drawn particulars of the petitioner - husband, that at the relevant time he was getting the gross salary of Rs.10,009/- and after deductions, both statutory and voluntary comes to Rs.7,043/-. Even if we take into account the deduction towards GPF subscription, the take home salary of the husband comes to Rs.9,000/- per month. Though in the affidavit filed in support of the application, the wife has averred several details regarding money lending business through his mother and investment in Bank and other business etc., the same have not been substantiated by her by placing documentary evidence. Accordingly, in the light of the fact that the wife, who is having no other independent source of income, except the meager amount of Rs.400/- per month, I am of the view that grant of Rs.3,000/- per month as interim maintenance would be quite reasonable and acceptable.

In the result, CRP.No.2089 of 2002 filed by the husband, is dismissed; CRP.No.2078 of 2002, filed by the wife, is allowed in part, enhancing the interim maintenance from Rs.1,250/- to Rs.3,000/- per month from the date of petition. The amount of Rs.2,500/- towards litigation expenses is hereby confirmed. There will no order as to costs in both the revisions.

In view of the disposal of the main revisions, connected CMPs., are closed.

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