

C. Krishnan Vs. Ponmudi

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Court : Chennai

Decided On : Jul-17-1991

Reported in : I(1993)DMC502; (1992)IMLJ496

Judge : Abdul Hadi, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 24

Appeal No. : C.R.P. No. 1449 of 1991

Appellant : C. Krishnan

Respondent : Ponmudi

Advocate for Def. : V. Raghavachari, Adv.

Advocate for Pet/Ap. : S. Jagadeesan, Adv.

Judgement :

Abdul Hadi, J.

1. The civil revision petition is by the husband who was the respondent in I.A. No. 254 of 1990 and the petitioner in H.M.O.P. No 168 of 1989. The H.M.O.P. is for divorce of the respondent-wife on the ground of cruelty and desertion. While the H.M.O.P. was pending, the abovesaid I.A. No. 254 of 1990 was filed by the wife under Section 24 of the Hindu Marriage Act, claiming interim maintenance from

the date of the said O.P. at the rate of Rs, 750 per month and for litigation expenses to the extent of Rs. 1,000. The Court below has granted interim maintenance at the rate of Rs. 650 per month from the date of O.P. and has also granted the other prayer for litigation expenses as claimed. Against the said order, this civil revision petition has been filed by the husband.

2. After going through the judgment, though I was not inclined to admit the C.R.P. on the specific grounds raised by the petitioner in the memorandum of grounds, the learned Counsel for the petitioner submitted before me that the grant of interim maintenance from the said date of the original petition, viz., August, 1989 was bad in law and the Court had no power to grant maintenance from the date, particularly when the LA. had been filed in about August, 1990 only. So, I ordered notice of motion on 19.6.1991 and the respondent-wife is represented by Counsel. He submitted that Courts had held in very many cases that the Court could grant such interim maintenance from the date of service of summons in the main O.P. In the present case, after verification, it was stated that the summons was served on 12-9-1989 though the O.P. was filed in August, 1989. So, the learned Counsel for the respondent contended that if at all the impugned order could be modified to the effect that the maintenance ordered could be for the period beginning from 12-9-1989, if not from August, 1989, the date when the main O.P. was filed.

3. On this point he relied on E.K. Raghavan v. K.K. Saroja, : AIR1987 Ker151 , Smt. Sobhana v. Amar Kanta, : AIR1959 Cal455 Mahalingam Pillai v. Amsavalli, : (1956)2MLJ289 .

4. In the above referred to E.K. Raghavan v. K.K. Saroja, : AIR1987 Ker151 , the O.P. was filed on 26-3-1980, summons was issued on 9-4-1980, the I.A. for interim alimony was filed on 24-11-1980 and the alimony was granted from the abovesaid date 9-4-1980. In that context, the learned Judge observed as follows:

'The chief point for doubt in this case was with regard to the duration over which the Court can order alimony. Relying on a decision reported in Radhakumari v. K.M.K. Nair, 1982 K.L.T. 417 : : AIR1983 Ker139 , this Court said that there is no legal impediment for the Court directing maintenance to be paid by the husband from the date of service of summons in the main petition even though the petition

for interim relief was filed sometime after the filing of the main petition.'

In the above referred to Banerjee v. Sujataa Banerjee, 70 C.W.N. 633 also, reliance was placed on the above referred to Mahalingam Pillai v. Amsavalli, : (1956)2MLJ289 . Similar is the decision reported in the above referred to N. Subramaniam v. Mrs. M.G. Saraswati, A.I.R. 1965 Mys. 38. .The learned Counsel for the respondent also brought to my notice Jwala Prasad v. Meena Devi, : AIR1987 All130 , where the Allahabad High Court has held that such maintenance could be granted from the date of the institution of the original petition.

5. As against these decisions no doubt, the learned Counsel for the petitioner relied on Bhanwar Lal v. Kamala Devi, 1983 AHLR 235 wherein I find the following observation :

'With regard to the period for which the interim maintenance amount should be awarded, some Courts have taken the view that the respondent spouse is entitled to get interim maintenance from the date on which the service of the main petition is effected upon the respondent. But in my view the interim maintenance should be awarded to the indigent spouse from the date when the application under Section 24 of the Act is actually moved. There may be cases where the respondent may not be in justifiable need of interim maintenance during the earlier stages of the matrimonial litigation or may unduly delay the filing of an application under Section 24 for the interim maintenance for several years after the filing of the main petition and in all such cases it would not be proper to award a lump sum amount to the respondent spouse, who has neglected to file an application under Section 24 of the Act soon after the service is effected upon her of the notice of the main petition.'

6. In view of the decisions of several High Courts including this Court, I am not inclined to agree with the view taken by the Rajasthan High Court in the above referred to Bhanwar Lal v. Kamla Devi, and would prefer to take the view taken in the above referred to E.K. Raghavanv. K.K. Saroja, : AIR1987 Ker151 and Mahalingam Filial v. Amsavalli, : (1956)2MLJ289 .

7. No doubt in the above referred to *Bhanwar Lal v. Kamla Devi*, , in the passage above quoted it is stated that there may be cases where the spouse may not be in justifiable need of interim maintenance during the earlier stages of the matrimonial litigation and may unduly delay the filing of application under Section 24. Further, the learned Counsel for the petitioner also stressed the point that in the present case, the I.A. was filed more than ten months after the summons was served in the main O.P. But, I do not think that this can be considered as a very long delay. That apart, in the affidavit in support of the I.A., the wife states that three years after the marriage (which took place in 1953), she was driven out of the house. After stating so in paragraph 5 of the affidavit, she says as follows :

'I state that from that onwards I am suffering without food and proper dress, I have no means to maintain myself. In spite of several panchayats and mediators the respondent refused to take back unless dowry demand is complied with.'

As against this allegation. I only find a general and vague denial in the counter statement filed by the husband as follows :

'The petitioner has means to defend the case and also to maintain herself.'

'So, it cannot also be said that the wife was having means earlier to the filing of the said I.A., in the light of the abovesaid allegations in the affidavit and counter, as stated above. It has also been observed in the above referred to *Smt. Sobhana Sen v. Amar Kanta*, : AIR1959 Cal455 , as follows:

'It is well-known, that orders for maintenance are passed even at a very late stage of the proceedings.'

8. Regarding the quantum of maintenance, the learned Counsel for the petitioner argued that it is excessive. But the Court below has come to the conclusion that the husband gets Rs. 2,500 per month as income. Further, admittedly apart from the petitioner-husband being a salaried employee, he is also owning lands, where several crops are cultivated and income is earned therefrom. The Court below points out the evidence given by P.W. 2, the Village Administrative Officer regarding the extent of the land owned by him and the crops raised therein. He

has also given details of his earnings from the abovesaid lands and he has also produced Exs. A-1 to A-4. Onitta and Adangal extracts relating to the lands owned by the petitioner. All these are mentioned in detail in paragraph 8 of the Order of the Court below. Further, the Court below rightly rejected Ex. P-1 filed by the petitioner-husband to contend that his salary was only Rs. 250 per month, and came the conclusion that he was earning at least Rs. 2,500 per month. So, taking all these into consideration, the Court below has held that he would be getting Rs. 30,000 per year, in other words, Rs. 2,500 per month. I do not find any error of jurisdiction in the order passed by the Court below.

9. The result is, the order of the Court below requires only one modification, viz., the interim maintenance is granted only from the above-said date of 12-9-1989 and not from the earlier date of the main O.P. Subject to the above modification, the civil revision petition is dismissed. No costs.

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