

V. Santhanam Vs. S. Sathya,

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Court : Chennai

Decided On : Aug-21-2002

Reported in : AIR2003Mad94

Judge : P.D. Dinakaran, J.

Acts : [Maintenance Act, 1956](#) - Sections 18, 20, 23, 23(2) and 23(3); Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : C.R.P.PD. No. 1398 of 2002 and CMP. No. 11838 of 2002

Appellant : V. Santhanam

Respondent : S. Sathya, ;monica, Minor and Shamili, Minor by Mother and Guardian S. Sathya

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

Disposition : Revision petition dismissed

Judgement :

ORDER

P.D. Dinakaran, J.

1. The petitioner is the defendant in the suit in O.S.No.106 of 1999 laid by the first respondent-wife and her two minor children viz., Respondents 2 and 3, for

maintenance under the provisions of the Hindu Adoptions and [Maintenance Act, 1956](#)(hereinafter referred to as `the Act').

2. Pending the above suit, the respondents herein viz. plaintiffs in the above suit filed I.A.No.2 of 2000 for interim maintenance claiming a sum of Rs.1,500/- per month to the wife and Rs.750/- per month to each of the minor children viz., respondents 2 and 3 /defendants 2 and 3.

3. The application for interim maintenance was resisted by the revision petitioner-husband, contending that in the absence of any specific provision under the Act for awarding interim maintenance, the very application for interim maintenance itself is not maintainable.

4.The Court below by decree and order dated 4.7.2002, after appreciating the evidence on record, found that the revision petitioner-husband is a Photographer attached to the Inspector General of Police, Chennai-4 and is earning a salary of Rs.8,900/- per month with a further allowance which works out to a net income of Rs.12,000/- per month and awarded a total sum of Rs.1,200/- per month of which, a sum of Rs.500/- per month was awarded to the first respondent-wife and Rs.350/- per month to each of the minor children apart from Rs.800/- p.m. already awarded in M.C.No.114 of 1995 in proceedings under Section 125 Cr.P.C. Aggrieved by the said order dated 4.7.2002, the respondent-husband has filed the above revision.

5.Mr.S.Sadasharam, learned counsel for the petitioner-husband reiterates the submissions made on behalf of the respondent-husband before the I Additional Family Court, Chennai and contends that in the absence of any provision under the said Act, interim application for maintenance is not maintainable.

6. Inter alia, the learned counsel for the petitioner also contends that a sum of Rs.800/- per month has already been awarded to the wife and children of the petitioner in M.C.No.114 of 1995 in the proceedings under Section 125 Cr.P.C and therefore the same should be taken into consideration while ordering interim maintenance in the order dated 4.7.2002.

7. I have given careful consideration to the submission of learned counsel for both sides.

8.1 In this regard, I am obliged to refer Section 18 of the Act, which reads as follows:

'Section 18. Maintenance of Wife: (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately;

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

A reading of section 18 of the Act makes it clear that the maintenance intended under Section 18 of the Act is meant during the lifetime of the wife.

8.2. Similarly Section 20 of the Act deals with the maintenance of the children and aged parents. Section 20 of the Act again provides maintenance during the life time of the children and the parents, which reads as follows:

Section 20: Maintenance of children and aged parents:

(1) Subject to the provisions of this section a Hindu is bound during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

8.3 Section 23 of the Act deals with the powers of the Court in awarding maintenance under the provisions of the Act which reads as follows:

Section 23: Amount of maintenance:-(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in sub-section(2) or sub-section(3), as the case may be, so far as they are applicable.

Under Section 23 of the Act, the court is vested with a discretion in determining and awarding the maintenance as framed under the Act, which includes the interim maintenance, pending disposal of the petitions for maintenance.

9. A harmonious reading of Sections 18,20 and 23 of the Act makes it clear that the Court is conferred with wide discretion of powers which, no doubt, have to be exercised judiciously to achieve the object of the enactment i.e. in awarding maintenance during the lifetime of the wife, children and the parents. 'The life period' undoubtedly includes the period of litigation. Hence the power to grant

interim maintenance has to be read into the provisions of Sections 18,20 and 23 of the Act referred to above or otherwise, it would defeat the very object of the Legislation.

10. With regard to the other contention of the learned counsel for the petitioner that the respondents have already been awarded Rs.800 per month in M.C.No.114 of 1995 initiated under Section 125 Cr.P.C, it is made clear that the Family Court had, in fact, taken judicial notice of the

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award viz., passed by the learned Judicial Magistrate under Section 125 Cr.P.C. and awarding a sum of Rs.800/- per month as interim maintenance and therefore I do not find any reason to interfere with the order dated 4.7.2002 made in I.A.NO.2 of 2000 in O.S.No.106 of 1999 on the file of the learned I Additional Principal Judge, Family Court, Chennai. The Civil Revision Petition fails and is therefore dismissed. No costs. Consequently, CMP.No.11838 of 2002 is also dismissed.

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