

Ramesh Vs. Ambigeswari

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Court : Chennai

Decided On : Mar-22-2013

Judge : M. Venugopal

Appellant : Ramesh

Respondent : Ambigeswari

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Date:- 22.03.2013 Coram The Honourable Mr. Justice M. VENUGOPAL C.R.P. PD. No.1909 of 2010 and M.P. No.1 of 2010 Ramesh ... Petitioner ..Vs.. Ambigeswari ... Respondent Civil Revision Petition filed against the order dated 30.3.2010 passed in I.A. No.10 of 2010 in H.M.O.P. No.13 of 2009 on the file of the Sub Court, Rasipuram. For Petitioner : Mr. N. Manokaran For Respondent : [Court Notice served on 18.7.2010 Private Notice served on 8.7.2010] Yet No appearance ` O R D E R The Petitioner/Respondent(Husband) has preferred the present Civil Revision Petition as against the order dated 30.3.2010 in I.A. No.10 of 2010 in H.M.O.P. No.13 of 2009 passed by the learned Subordinate Judge, Rasipuram.

2. The Learned Subordinate Judge, Rasipuram, while passing the order in I.A. No.10 of 2010 in H.M.O.P. No.13 of 2009 on 30.3.2010, has among other things, observed that on the side of the Petitioner (Husband), no evidence has been produced to show that he has got some deformity in his body and the only stand taken on his side is that the Respondent (Wife) is going for work and earning a sum of Rs.30,000/- per month and therefore, without going for employment, the

Petitioner(Husband), by sleeping in bed in his house, thinking of earning money from the Respondent(Wife) and to live in a comfortable manner as he likes, for which Section 24 of the Hindu Marriage Act will not come to his aid etc. and resultantly, dismissed the application with costs.

3. It is to be pointed out that the Revision Petitioner (husband), in I.A. No.10 of 2010, has claimed ad interim alimony of Rs.5,000/- per month and also litigation expenses of Rs.20,000/- from the Respondent/Wife. The Respondent/Wife has filed a detailed counter to I.A. No.10 of 2010 on the file of the trial Court, inter-alia stating that after marriage and after they have been to Bangalore, the Petitioner/Husband has informed that he has no liking for his job and wanted to do business and therefore, he has not gone for job and has remained in the house and also for doing business, he demanded from her that she should bring a sum of Rs.1,00,000/- from her parents and by so saying, he indulged in drinking and also beat and harassed her etc.

4. In the affidavit in I.A. No.10 of 2010 in H.M.O.P. No.13 of 2009, the Revision Petitioner/Husband (as Petitioner) has stated that at the time of his marriage, he has been employed at Bharathi Airtel at Bangalore on a monthly salary of Rs.17,000/- and that his wife has been employed in Tata Sky Software Company on a low salary. This Court pertinently points out that the Respondent/Wife in H.M.O.P. No.13 of 2009 on the file of the trial Court as Petitioner in paragraph 4 has clearly averred that the Revision Petitioner/Husband has stated that he is working as Technical Engineer in Airtel Company at Bangalore on a monthly salary of Rs.17,000/-.

5. The Respondent/Wife has averred that the Petitioner/Husband has snatched her thirty sovereigns of jewels and also cash of Rs.30,000/- paid by her parents at the time of marriage. Even she has been driven to a stage of asking the Petitioner/Husband to spend for her essential expenses and also that the Petitioner/Husband has taken all her monthly salary in entirety. In view of the fact that she has filed a divorce petition in H.M.O.P. no.13 of 2009 on the file of the learned Subordinate Judge, Rasipuram seeking the relief of dissolution of marriage that had taken place on 21.11.2007 between herself and the Revision

Petitioner/Husband under Section 13(1)(1a) of the Hindu Marriage Act, 1955 and because of the pendency of the said petition, in order to escape from the same, the Revision Petitioner/Husband has filed I.A. No.10 of 2010 seeking interim maintenance and litigation expenses as stated supra. 6.. It is to be borne in mind that an application praying for maintenance pendente lite and expenses of proceedings filed under Section 24 of the Hindu Marriage Act, 1955 is to be disposed of/decided by means of affidavits filed by the parties concerned. As a matter of fact, Section 24 of the Act is enjoined of the provisions of Section 25 of the Hindu Marriage Act (permanent alimony and maintenance) or the provisions of the Hindu Adoptions and Maintenance Act, 1956 or Section 125 of the Criminal Procedure Code. Also that, when the Respondent/Wife is in employment, the Petitioner/Husband cannot make himself only dependant on her income by filing an application under Section 24 of the Hindu Marriage Act, 1955, especially in the absence of any handicap or fetter to earn. The words "Expenses of Proceedings" occurring in Section 24 of the Hindu Marriage Act will include within its ambit like Advocate's fees, purchase of stamp papers/Court fees, clerical expenses, expenses incurred towards stationery, expenses for summoning witnesses etc.

7. At this juncture, this Court worth recalls the decision in GOVIND SINGH v. SMT. VIDYA reported in A.I.R. 1999 RAJASTHAN at page 304 wherein in paragraph 3 it is inter-alia observed and laid down as follows:- " 3. It is true that Section 24 of the Hindu Marriage Act, 1955 entitles either party to move an application for maintenance provided such party has no means of subsistence and the other party is in a position to provide maintenance. But it does not mean that the husband who is otherwise capable of earning his living should stop earning the living and start depending on earning of his wife. In the instant case it appears that the appellant Govind Singh has incapacitated himself by stopping the running the autorikshaw on hire. It is a well-established maxim of Anglo Saxon jurisprudence that no person can be allowed to incapacitate himself. That maxim is applicable to the case of earning husband. A person who voluntarily incapacitates himself from earning is not entitled to claim maintenance from the other spouse." 8. Also, this Court points out the decision in A.I.R. 2004 CALCUTTA at page 61 reported in ROUSSEAU MITRA v. V. SHRIMATI CHANDANA MITRA at special pages 62 and 63 wherein at paragraph 9, it is observed and held as follows:- " 9. There is no

fixed principle for determining the amount of maintenance pendente lite or expenses of the proceedings. The Court has to consider the status of the parties, their needs and the capacity of the husband to pay having regard to the reasonable expenses for the maintenance of the wife and the child, which he is obliged to meet under the law. The amount of maintenance pendente lite should be fixed for the wife and the child taking into consideration the cost of living index so that she does not feel handicapped. The husband was an employee of a private firm and he used to earn by undertaking private typing jobs. It is alleged by the husband that he has left his service voluntarily with effect from November 2001 and presently he is unemployed and has no income at all to pay the maintenance pendente lite or expenses of the proceedings. The husband is an able-bodied person capable of earning. The husband voluntarily incapacitated himself from earning, but he cannot avoid his liability to maintain his wife and the child." 9. More importantly, in the decision in A.I.R. 2001 MADHYA PRADESH at page 67 reported in YASHPAL SINGH THAKUR v. SMT. ANJANA RAJPUT at special page 68 wherein in paragraph 9, it is held thus:- " 9. In the case at hand it can be irrefutably concluded that the husband petitioner has, by his own conduct decided to lead a leisurely life, and has made no attempts to earn money which he is capable of earning. He can not afford to incapacitate himself and sustain an application under Section 24 of the Act. It will be an anathema to the very purpose of the said provision. Hence, I am of the considered opinion that the conclusion reached at by the Trial Judge is absolutely defensible and the impugned order does not warrant any interference." 10. An able bodied individual is entitled to maintain his wife. It is the statutory obligation of the husband to maintain his wife and he cannot wriggle out of the situation in any manner whatsoever. The present case is not where the Petitioner/Husband is either in a situation of penury or he is suffering from any disability/ailment. Per contra, he is an able bodied person, aged 31 years at the time of filing I.A. No.10 of 2010. Also the Respondent/Wife has clearly stated in her counter to I.A. No.10 of 2010 that the Petitioner/Husband has stated that he is not liking his job and wants to do business, but remained in the house without going for any work etc.

11. It is true that the proceedings under Section 24 of the Hindu Marriage Act, 1955 is of summary one. While dealing with the application under Section 24 of

the Hindu Marriage Act, the prime consideration before the Court of law is the inability of the spouse to maintain himself or herself for want of financial means or inadequacy of funds/means to maintain at the level of social status of the other spouse from whom interim maintenance is sought and not the mis-conduct of the spouse.

12. There is no dispute with regard to the payment of maintenance pending main H.M.O.P. proceedings and litigation expenses can be decided on the basis of the affidavit of the parties without recording evidence. As per Section 24 of the Hindu Marriage Act, the Court of law has to decide for ad interim maintenance whether the claimant has got all sufficient independent income or not. In the instant case on hand, the husband has informed the Respondent/Wife that he is not liking his job and wanted to do business and therefore, he has remained in the house without going for employment and also according to the Respondent/Wife, the Petitioner/Husband has harassed her and ill treated her in numerous ways.

13. If a person is an able bodied person and is well qualified and has already been in the job is not expected to remain as an idle spectator nor squeeze out the other spouse by relieving her purse for a cut in the nature of pendente lite maintenance claim. In fact, Section 24 is not meant for entertaining such person, who will have to be paid a dole granted by his wife, against whom, she has got a grievance and also come to Court in H.M.O.P. proceedings. To put it differently, law will not come to the aid of any idle person or any indolent person.

14. Be that as it may, on a careful consideration of overall assessment of the facts and circumstances of the present case i.e. in respect of maintenance, this Court comes to an inevitable conclusion that the trial Court has rightly held that the Revision Petitioner/Husband is not entitled to file I.A. No.10 of 2010 seeking interim maintenance of Rs.5,000/- towards ad interim alimony and Rs.20,000/- towards litigation expenses because of the fact that he is not in a position to maintain his wife. The said order does not suffer from any illegality or irregularity. Consequently, the Civil Revision Petition fails.

15. In the result, the Civil Revision Petition is dismissed without costs. Resultantly, the order passed by the trial Court in I.A. No.10 of 2010 in H.M.O.P. No.13 of 2009

dated 30.3.2010 on the file of the learned Subordinate Judge, Rasipuram is confirmed by this Court for the reasons assigned in this revision. Consequently, the connected M.P. is also dismissed. 22.03.2013 Index:- Yes/No. Internet:- Yes/No. ssa. To The Sub Court, Rasipuram. M. VENUGOPAL, J.

ssa. C.R.P. PD. No.1909 of 2010 and connected M.P. 22.03.2013

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