

Dr. Rajiv Verghese Vs. Rose Chakkramankkil Francis

[Civil Appeal No._____ of 2024 arising out of SLP (C) No. 4109 of 2023]

[Civil Appeal No._____ of 2024 arising out of SLP (C) No. 19922 of 2023]

1. Leave granted.

2. These are two appeals arising out of the impugned order dated 01.12.2022 passed by the Madras High Court in C.M.A. No.1539 of 2022, whereby the High Court has reduced the maintenance amount to be paid to the wife from Rs.1,75,000/- (Rupees One Lakh and Seventy-five thousand only) per month to Rs.80,000/- (Rupees Eighty Thousand only) per month. Both parties have challenged the said order of the High Court. The husband is the appellant in appeal @ SLP(C) No.4109/2023 and the wife is the appellant in appeal @ SLP(C) No.19922/2023. The husband is praying for further reduction of the maintenance amount and the wife is praying for enhancement of the same. For our purpose, the wife will be referred to as the 'appellant' and the husband as the 'respondent'.

3. The factual background of the present case is that the marriage between the appellant wife and respondent husband was solemnised on 15.09.2008 according to Christian customs. The respondent husband had one son from his previous marriage and there are no issues from this marriage. As the relations between the parties got estranged, on 19.03.2019, the respondent husband filed a petition for divorce being IDOP No.1284 of 2019 under Section 10(i) of the Indian Divorce Act, 1869 stating that the parties have developed incompatibility. He alleged cruelty while citing various incidents and prayed for divorce.

4. During the pendency of the divorce petition, the appellant wife herein filed an application being I.A No.1 of 2019 in IDOP No.1294 of 2019 before the Family Court, Chennai praying for maintenance of Rs.2,50,000/- (Rupees Two Lakh and Fifty Thousand only) per month along with litigation expenses amounting to Rs. 2,00,000/- (Rupees Two Lakh only). The wife claimed that the husband is a Cardiologist in MJ Hospital, Cochin and draws a salary of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) per month.

Plus, he has further income from a joint venture, by virtue of which he is earning a sum of Rs.20,00,000/- (Rupees Twenty Lakh only) per month. Further, he is earning rental income from his properties in Cochin to the tune of Rs.2,73,000/- (Rupees Two Lakh and Seventy Three Thousand only) and Rs.20,000/- (Rupees Twenty Thousand only) from his house in Chennai. Additionally, it was claimed that he owns several other properties. The wife stated that she has a M.Sc. degree in Clothing and Textile and she worked in 2012 for about ten months. However, the husband was against her working and she was forced to leave her job.

5. The Family Court, after evaluating the status, standard of living, income and assets of the parties, held that Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) per month would be a reasonable amount to be paid to the wife as interim maintenance and directed the respondent husband herein to pay the same, vide order dated 14.06.2022.

Aggrieved by this, the respondent husband filed an appeal being Civil Miscellaneous Appeal No. 1539 of 2022 before the Madras High Court challenging the same. The

Madras High Court partially allowed the appeal vide impugned order dated 01.12.2022 by reducing the interim maintenance amount to Rs.80,000/- (Rupees Eighty Thousand only) per month, effective from the date of the petition, i.e. 03.07.2019 until the disposal of the divorce proceedings. It is this order which has given rise to the present appeals.

6. We have heard the learned counsels for the respective parties.

7. The Family Court upon perusal of records and evidence on both sides in order to fix interim maintenance, found that it is clear that after desertion, the appellant wife had no other place to reside and thus, chose to seek shelter with her mother-in law, who is aged 93 years. Later on, considering the health of the aged mother-in law, the appellant wife started residing with her elder brother. Family Court also observed that the respondent husband failed to produce his income tax returns.

However, documents produced by the appellant and evidence of both parties in this regard would clearly reflect the fact that the respondent is a renowned expert in cardiology and has a number of worthful properties and is the only legal heir to his father who has passed away. His mother is running the age of 93. He is accruing all the incomes from the properties owned by his mother and himself and is also found to have been in possession of a school, though it is stated to be running in losses. However, the respondent did not come forward with any proof to this effect.

8. The Family Court also noted that the respondent specifically stated that when the parties were residing together, he engaged two maids on 24x7 basis to aid them in their domestic work and maintenance and the appellant is accustomed to these comforts. The Family Court therefore compared the status, standard of life, income source, properties, its possession, rights and liabilities of the respondent and found that the appellant cannot be denied to enjoy the privileges as enjoyed by the respondent.

Upon this consideration, the Family Court found it reasonable to award a sum of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) as interim maintenance to be paid to the appellant by the respondent per month from the date of the petition being 03.07.2019 till the disposal of the main divorce petition being OP 1284 of 2019.

9. The High Court, on the other hand, while allowing the appeal of the husband and modifying the order of the Trial Court noted that the Hospital in Kerala agreed to pay a sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) per month as salary to the respondent husband in 2017.

Further, the joint venture agreement is of the year 2015 and there is no evidence to suggest that the respondent was still receiving the said amount from the builder and that the sale consideration received by him cannot be treated as 'monthly income'. The Bank statements on record pertained to a few months in the years 2017, 2018 and 2019 and the High Court stated that those do not assist them in determining the present income of the appellant and did not take those into consideration for the purpose of deciding the quantum of maintenance.

10. The High Court held that the respondent, being a Cardiologist, earned a monthly income of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) is established and that he and his mother received a rent of Rs.2,73,301/- (Rupees

Two Lakh Seventy Three Thousand and Three Hundred One only) per month, of which he received only half amount.

Based on these two considerations, the High Court concluded that the appellant wife established the respondent's income to at least Rs.2,50,000/- (Rupees Two Lakh and Fifty Thousand only) per month. The High Court took note of the fact that the appellant sacrificed her employment after the marriage and determined that the reasonable amount of interim maintenance to be one third of the respondent's income which was Rs.80,000/- (Rupees Eighty Thousand only) per month.

11. We find that the High Court has erred in reducing the quantum of maintenance to Rs.80,000/- (Rupees Eighty Thousand only) per month. The High Court has considered only two sources of income for the respondent. Firstly, the sum of Rs.1,25,000/- (Rupees One Lakh and Twenty-Five Thousand only) that he earns from working as a Cardiologist at the Hospital. Secondly, the rent amount he and his mother receive from a property, of which the High Court has stated that he receives half the amount only.

However, the High Court has not dealt with the findings of the Family Court wherein the respondent is said to own a number of worthful properties and the fact that he is the only legal heir of his father. The Family Court found that the respondent is accruing all the incomes from the properties owned by his mother. The High Court has not dealt with the aspect of the number of properties owned by the respondent and looked at the rental income from one property. The Family Court also noted that the respondent was found to be in possession of a school and could not substantiate his claim that the school was running in losses.

Therefore, the High Court has overlooked certain aspects relating to the income of the respondent which were looked at by the Family Court. Further, it is also on record that the appellant is not working as she sacrificed her employment after the marriage. The appellant was accustomed to a certain standard of living in her matrimonial home and therefore, during the pendency of the divorce petition, is also entitled to enjoy the same amenities of life as she would have been entitled to in her matrimonial home.

12. Consequently, we allow the appeal of the appellant wife and set aside the order of the Madras High Court dated 01.12.2022 and restore the order of the Family Court. The respondent husband is directed to pay a sum of Rs.1,75,000/- (Rupees One Lakh and Seventy Five Thousand only) per month as interim maintenance as per the order of the Family Court dated 14.06.2022.

13. The appeal of respondent husband is accordingly dismissed in view of the above reasoning.

.....J. (Vikram Nath)

.....J. (Prasanna B. Varale)

New Delhi

November 19, 2024