

(2006) 11 MAD CK 0022

Madras High Court

Case No: CRP (PD) No. 784 of 2006 and CMP No. 7472 of 2006

M. Santhi

APPELLANT

Vs

P.R. Manoharan

RESPONDENT

Date of Decision: Nov. 15, 2006

Acts Referred:

- Hindu Marriage Act, 1955 - Section 25, 25(1)

Hon'ble Judges: S. Ashok Kumar, J

Bench: Single Bench

Advocate: V. Raghavachari, for the Appellant; N. Manoharan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Ashok Kumar, J.

1 This revision relates to a matrimonial dispute. The respondent who is the husband of the revision petitioner filed the HMOP. No. 139 of 2004 for dissolution of the marriage between them and for other reliefs. Pending the said HMOP, the wife filed I.A. No. 244 of 2004 for interim alimony and the said petition was allowed granting an interim alimony of Rs. 4000/= per month. Pending trial of the HMOP, the wife again filed I.A. No. 50 of 2006 seeking for a permanent alimony of Rs. 10,000/= per month.

2. The respondent also filed a counter to the said I.A., contending that after deduction he is only drawing a salary of Rs. 5,037/=. The revision petitioner belongs to a rich family and is now living with her parents. Her father is having a shopping mall and receiving Rs. 75,000/= as rent per month, apart from a Paper Mill in the name of Sri Andal Paper Mills (P) Ltd., and by their family business they are earning not less than a lakh of rupees per month. The revision petitioner is living in her bungalow worth of Rs. 20,00,000/= situate at Thirunagar Colony, Erode. The petitioner already filed MCOP No. 20 of 2004 before the CJM, Erode, but did not

prosecute the matter and it came to be dismissed for the petitioner's continuous absence. Even for settlement talks the petitioner is not amenable when the matter was referred to Lok Adalath. Along with the counter affidavit, the respondent has filed documents viz., list of jewellery, settlement deed, encumbrance certificates, insurance premium, and salary particulars of the respondent.

3. Pending enquiry of the said Interlocutory Application, the respondent/husband also filed a Memo contending that the I.A., for permanent alimony requires examination of parties and producing the documents to arrive at a correct decision and therefore the said I.A., shall be taken by a separate enquiry. For such a memo the wife also filed an objection stating that there is no provision contemplated that separate enquiries for deciding application for divorce and permanent alimony. The trial procedure is only one and there can be no separate trials in the same case.

4. The learned Principal Subordinate Judge, Erode allowed the Memo filed by the respondent/husband. Aggrieved by the same, the revision has been filed by the wife.

5. Learned Counsel for the revision petitioner contended that as per Section 25 of the Hindu Marriage Act, the application for permanent alimony has to be heard at the time of passing of any decree in the main petition and the reasoning of the learned Subordinate Judge, that the Interlocutory Application should be heard after the disposal of the HMOP is untenable.

6. Section 25(1) of the Hindu Marriage Act, 1955 reads as follows:

25. PERMANENT ALIMONY AND MAINTENANCE (1)-- Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

7. From the above provision it is clear that permanent alimony can be granted by the court exercising such jurisdiction, at the time of passing any decree or at any time subsequent thereto and during trial of the Original Petition for divorce, only interim alimony and litigation expenses can be granted. Therefore filing a petition for permanent maintenance during the pendency of the main divorce petition cannot be entertained, because a party cannot anticipate the result of the judgment in his/her favour.

8. Even in a case in which the husband files the divorce petition and he gets a decree, still maintenance can be refused on the ground that the wife is having independent income sufficient to maintain herself or her children as well. If the Court comes to the conclusion that there is no justification on the part of the wife to refuse to live with the husband, then also the wife will not be entitled for permanent maintenance. Thus before the grant of permanent maintenance, the court has to take into consideration the conduct of the parties, and the income and means of the respective parties and other circumstances and then only the same can be granted. Such exercise could be done only at the time of passing of the decree i.e., after evidence both oral and documentary adduced by the parties and completion of trial, or after disposal of the main petition, subsequent thereto, on an application made by a party to the proceedings.

9. The decision relied on by the learned Counsel for the respondent in Chandrika v. M. Vijayakumar reported in 1996 (1) 117 M.L.W. 695 is to the effect that the court may grant permanent maintenance to a party while disposing of the main petition even if no proper application has been moved. The above decision of this Court is for the well settled proposition that permanent alimony cannot be granted pending trial of the main divorce petition.

10. Thus it is premature on the part of the wife to file a petition for permanent alimony. For reasons stated above, it is clear that the said petition could be decided along with the main HMOP at the time of passing of decree and it is not necessary that only after disposal of the same by a separate enquiry it should be decided.

11. With the above observation, the CRP is dismissed. Consequently connected CMP is also dismissed. No costs.