



C.M.A. (MD) No.275 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 20.09.2023

PRONOUNCED ON : 25.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.A(MD).No.275 of 2017
and CMP(MD).No.3208 of 2017

G.Boomivelu

...Appellant

Vs

K.Aruna

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the fair and decretal order dated 22.09.2016 made in I.A.No.280 of 2015 in HMOP.No.335 of 2014 on the file of the Family Court, Tiruchirappalli and allow this appeal.

For Appellant : Mr.S.Vellaichamy

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The husband has filed the above appeal challenging the order of interim maintenance passed by the Family Court, Trichy.



C.M.A. (MD) No.275 of 2017

2.The appellant herein got married to the respondent on 01.09.2003 and the couple were blessed with a son on 14.07.2004. Due to matrimonial dispute, the wife started living in her parental home from October 2011 onwards. The husband had issued a legal notice seeking divorce on 20.03.2012. Thereafter, filed the present divorce petition on 06.04.2012 in HMOP.No.335 of 2014 before the Family Court, Trichy. The wife had filed a counter disputing the allegation made in the divorce petition.

3.Pending divorce proceedings, the wife had filed I.A.No.280 of 2015 seeking monthly maintenance of Rs.15,000/- per month for herself and her son.

4.The husband had filed a counter contending that the wife is running an independent business in which she is having better income than the husband. The Family Court after considering the submissions on either side, directed the husband to pay a sum of Rs.4000/- as maintenance to the wife and another sum of Rs.3,000/- as maintenance to the son from 24.08.2015 onwards. Challenging the same, the present appeal has been filed.

5.Heard the learned counsel appearing for the appellant.

6.Though the wife has been served, there is no representation either in person or through counsel.



C.M.A. (MD) No.275 of 2017

7.The learned counsel for the appellant had contended that at the time of admitting the appeal, this Court had directed the husband to deposit a sum of Rs.50,000/- by an order dated 27.04.2017 within a period of eight weeks. Accordingly, he had deposited the said amount on 16.08.2017. This Court called for a report from the Family Court, Trichy to verify whether the wife had withdrawn the said amount or not. The Judge, Family Court, Trichy by her communication dated 31.07.2023 had informed this Court that the wife has not chosen to withdraw the said amount.

8.The learned counsel for the appellant had further brought to the notice of the Court that HMOP.No.335 of 2014 was allowed exparte on 30.10.2019 and a decree for divorce was granted. However, the wife has not chosen to set aside the exparte decree. Therefore, any right of the wife to claim maintenance under order dated 24.08.2015 comes to an end by disposal of the divorce petition.

9.Considering the fact that the wife has not evinced any interest in setting aside the exparte decree for divorce coupled with the fact that she has not withdrawn the maintenance amount pursuant to the interim order of this Court, we are of the considered opinion that the appeal could be allowed setting aside the order of granting interim maintenance to a tune of Rs.7,000/- both to the



C.M.A. (MD) No.275 of 2017

wife and the son. However, this will not preclude the wife or the son from initiating appropriate independent proceedings to seek maintenance from the husband.

10. With the above said observations, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]

25 .09.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
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To

1. The Family Court, Tiruchirappalli
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD) No.275 of 2017

DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Judgment made in
C.M.A(MD).No.275 of 2017
and CMP(MD).No.3208 of 2017

25.09.2023