

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.6.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A. No.1247 of 2015
and
M.P.No.1 of 2015

S.Kannan ... Appellant/Petitioner-Husband

vs.

K.Jeevitha ... Respondent/Respondent-Wife

Prayer: Appeal is filed under Section 24 of the Hindu Marriage Act, 1955 against the fair and decretal order dated 28.3.2014 in I.A.378/2012 in OP No.152/2012 on the file of the Family Court, Salem.

For appellant : Mr.S.Muthukumar

For respondent : Mr.P.Jagadeesan

JUDGMENT

[by V.Ramasubramanian, J.]

This Civil Miscellaneous Appeal arises out of an order passed by the Family Court, Salem, directing the appellant-husband to pay an interim maintenance of a sum of Rs.5,000/- per month, apart from litigation expenses of Rs.7,000/-.

2. Heard Mr.S.Muthukumar, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondent.

3. The appellant-husband filed a petition in FCOP.152/2012 on the file of the Family Court, Salem, for divorce on the ground of cruelty. The respondent-wife is contesting the case on merits.

4. The respondent-wife took out an application in IA.378/2012 seeking maintenance and the cost of litigation. She claimed in the petition that the appellant was earning a monthly income of about Rs.20,000/-, and therefore, she claimed a sum of Rs.7,000/- towards interim maintenance and Rs.7,000/- towards litigation expenses.

5. The appellant-husband contested the application on the ground that he was not employed and that he was supported by his parents. He also claimed that the respondent's father is well-employed and that her brother is also earning a huge income.

6. Both parties did not adduce any evidence. Therefore, the Family Court went by the preponderance of probabilities on the basis of the pleadings and passed an order dated 28.3.2014 directing the appellant-husband to pay a monthly maintenance of Rs.5,000/- and litigation expenses of Rs.7,000/-. Aggrieved by the said order, the appellant has come up with the above Appeal.

7. Mr.S.Muthukumar, learned counsel appearing for the appellant contended that the quantum of interim maintenance has been arrived at by the Family Court, without any iota of evidence on the side of the respondent-wife. The learned counsel submits that when both parties did not adduce any evidence to show that the appellant was running a Computer Centre and was earning a particular amount of income, the Family Court could not have arbitrarily fixed the interim maintenance.

8. However, Mr.P.Jagadeesan, learned counsel for the respondent pointed out that the main petition for divorce itself was allowed to be dismissed for non-prosecution on 17.11.2014 and that a petition for restoration was just pending. Not a single penny has been paid by the appellant-husband so far.

9. We have carefully considered the rival submissions.

10. It is true that both parties did not adduce any evidence. However, it does not mean that the order for interim maintenance is completely vitiated. In cases of this nature, some amount of arbitrariness is unavoidable in fixing the quantum of interim maintenance. While deciding the application for interim maintenance, the Family Court will have to follow only certain yardsticks. The same has been followed by the Family Court and we see no reason to interfere with the order of the Family Court.

Hence, the Civil Miscellaneous Appeal stands dismissed. No costs. M.P.1/2015 is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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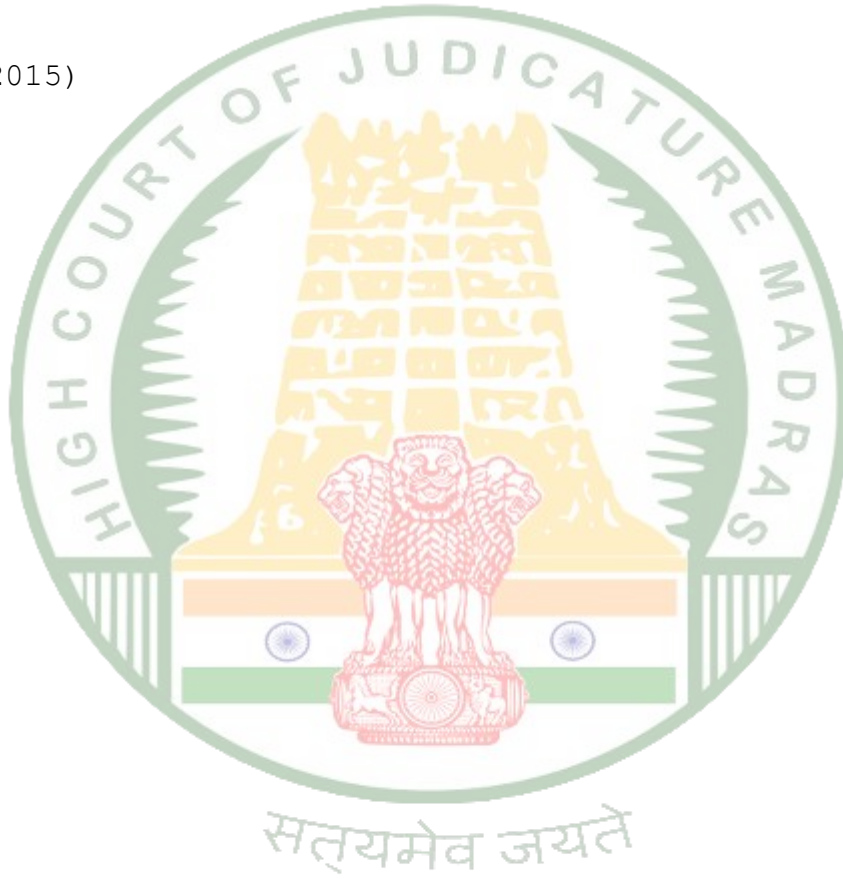
To

The Family Court,
Salem.

+1cc to Mr.S.MuthuKumar, Advocate, S.R.No.30285

C.M.A. No.1247 of 2015
and
M.P.No.1 of 2015

JSV(CO)
CA(30/06/2015)



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