

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-09-2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2179 OF 2015

A.Prakasam ... Appellant

-vs-

S.Archana Kumari @ Archana ... Respondent

Appeal against the order, dated 16.03.2015, made in I.A.No.2245 of 2014, in H.M.O.P.No.994 of 2010, on the file of Principal Family Court, Coimbatore.

For appellant : S.B.Viswanathan

(Judgment of the Court was made by S.Manikumar,J.)

At the time of hearing of the condonation petition, we have heard the petition on merits. Finding no valid grounds for interference and, no order, adverse to the interest of the respondent is passed, we condoned the delay and pass this order on appeal.

2. Challenge in this appeal is to the fair and decretal order, dated 16.03.2015, made in I.A.No.2245 of 2014, in H.M.O.P.No.994 of 2010, on the file of Principal Family Court, Coimbatore, wherein the Court below has allowed the prayer, for modification of interim maintenance.

3. Material on record discloses that earlier, appellant/husband has filed H.M.O.P.No.994 of 2010, for divorce. In the said petition, under Section 24 of the Hindu Marriage Act, in I.A.No.1000 of 2011, the learned Principal Judge, Family Court, Coimbatore, vide order, dated 18.10.2012, has awarded interim maintenance of Rs.1,500/- per month, and Rs.2,000/-, towards litigation expenses, to the respondent/wife. Subsequently, I.A.No.2245 of 2014 has been filed by the respondent/wife, after two years, to revoke the said order in I.A.No.1000 of 2011, and she has prayed for a direction to the appellant/husband to pay an amount of Rs.5,500/- (Rs.3,000/- + Rs.2,500/-) per month, as maintenance to her, and minor child respectively, and she has also prayed for a direction that a sum of Rs.10,000/- be paid for the school expenses, contending, inter alia, that sum of Rs.1,500/- per month awarded earlier, is inadequate. Opposing the said relief, the appellant/husband has submitted that the directions in I.A.No.1000 of 2011 have been complied with. He further submitted that as an autorickshaw driver,

income earned by him is less. Before the trial Court, the appellant/husband has further submitted that the prayer made in I.A.No.2245 of 2014, for revocation of the order in I.A.No.1000 of 2011, is not maintainable. He has also denied the contention that the respondent/wife, finds it difficult to incur the expenditure for providing education to the minor child, aged five years.

4. After considering the rival submissions and placing reliance on the decisions in the cases of Anuradha v. Santosh Nath, reported in AIR 1976 DELHI 246, and Laxmi Priya Rout v. Kama Prasad Rout, reported in AIR 1992 ORISSA 88, and by observing that the Court has the power to modify an order of interim maintenance, and taking into consideration the change in circumstances, viz., the costs towards educational expenses, avocation of the appellant/husband, the trial Court, by fixing his annual income of Rs.15,000/- per month, and considering the meagre amount of maintenance of Rs.1,500/- ordered earlier in I.A.No.1000 of 2011, deemed it fit to direct the appellant/husband, to pay a sum of Rs.2,000/-, per month to the wife; Rs.2,000/- per month to the minor child, towards interim maintenance, from the date of petition, and further directed to pay the same on or before 10th of every English Calendar month. The trial Court has also ordered to pay a sum of Rs.6,000/- per year, as lumpsum expenses, towards the educational expenses. Thus, by order dated 16.03.2015, I.A.No.2245 of 2015 in H.M.O.P.No.994 of 2010 has been partly allowed, by the trial Court.

5. Though Mr.S.B.Viswanathan, learned counsel for the appellant, has contended that when I.A.No.2245 of 2015, filed for revocation of the order made in I.A.No.1000 of 2011, itself is not maintainable, the trial Court ought not to have enhanced the interim maintenance amount, by treating the application as one filed for modification, and further contended that considering the escalation in the cost of fuel, the appellant would not be in a position to pay the enhanced amount and further made submissions that the trial Court has failed to consider that the respondent was working as a Sales-woman and earning Rs.1,400/- per month, this Court is not inclined to accept the said contentions, for reversing the order, impugned in this petition, for the reason, that there is a moral and legal obligation on the part of the husband to maintain his wife and minor child.

6. The question whether the Court has power to modify its earlier order has been considered by the trial Court, by placing reliance on the judgments in the cases of Anuradha v. Santosh Nath, reported in AIR 1976 DELHI 246, and Laxmi Priya Rout v. Kama Prasad Rout, reported in AIR 1992 ORISSA 88, in proper perspective, is the matter for consideration. Admittedly, no arguments have been advanced on that aspect.

7. Though the appellant/husband has expressed difficulty in providing the enhanced maintenance amount of Rs.4,000/- (Rs.2,000/- to the wife and Rs.2,000/- to the minor child), per month, and also questioned the lumpsum payment of Rs.6,000/- per year, towards the educational expenses for the minor child, this Court is not inclined to accept his contentions, considering the fact, that in order to provide food, education, health and to meet out the other expenditure for providing basic amenities, one requires a reasonable amount. On the facts of the case, we only observe that, the wife of an

autorickshaw driver can be at the same level, in financial status, unless a contrary, legally acceptable evidence is adduced. Therefore, the sum of Rs.4,000/-, per month, ordered in all, as maintenance to the wife and minor child, cannot be said to be excessive. Cost of education in private institutions is expensive, and it is no longer philanthropic or charitable. Needless to say, that to provide education, one has to incur considerable expenses. Fees in private educational institutions is also on the increase. Therefore, Rs.6,000/- awarded for educational expenses per year is not a higher amount, warranting intervention. If we may say so, maintenance awarded to the respondents at Rs.133/- per day, is not excessive. I.A.No.2245 of 2014 is stated to have been filed in the month of October, 2014, after two years from the earlier order in I.A.No.1000 of 2011, dated 18.10.2012.

8. Going through the material on record and impugned order, dated 16.03.2015, made in I.A.No.2245 of 2014, in H.M.O.P.No.994 of 2010, on the file of Principal Family Court, Coimbatore, we do not find that the appellant/husband has made out any case for interference. For the reasons stated above, impugned order is sustained. C.M.A. is dismissed. No costs. Consequently, appellant/husband is directed to pay a sum of Rs.25,000/- to the respondent/wife by way of a Demand Draft or by any other mode, within a period of four weeks from the date of receipt of a copy of this order. Connected M.P.No.1 of 2015 is closed.

dixit

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

The Principal Judge,
Family Court, Coimbatore.

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C.M.A.No.2179/2015

KJI (CO)

sd : 19/10/2015