

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

C.M.A.No.2223 of 2015
and M.P.No.1 of 2015

Babu @ Purusothaman ... Appellant/Respondent/
Petitioner

Vs.

S.Prem Geetha ... Respondent/Petitioner/
Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the Fair and Decretal Order dated 09.07.2015 made in I.A.No.227 of 2015 in H.M.O.P.No.392 of 2014 on the file of the Learned Judge, Family Court, Erode.

For Appellant : Mr.V.Balamurugane

J U D G M E N T

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

The Appellant/Husband/Respondent has projected the instant Civil Miscellaneous Appeal before this Court as against the order dated 09.07.2015 in I.A.No.227 of 2015 in H.M.O.P.No.392 of 2014 passed by the Learned Judge, Family Court, Erode.

2.The Learned Judge, Family Court, Erode, while passing the Impugned Order in I.A.No.227 of 2015 (filed by the Respondent/Petitioner/Wife) in H.M.O.P.No.392 of 2014 had passed an order, directing the Appellant/Husband to pay a sum of Rs.5000/- towards maintenance to the Respondent/Wife/Petitioner from the date of filing of the Petition (Interlocutory Application) and further, ordered the same to be paid on or before 5th of that month and directed to pay the arrears within a period of one month time. Also, the Learned Judge, Family Court, Erode, determined the Litigation Expenses at Rs.5000/-.

3.The Appellant/Respondent/Husband has an aggrieved person has filed the present Civil Miscellaneous Appeal before this Court.

4.The Learned counsel for the Appellant contends that the trial Court without properly appreciating the evidence had directed the Appellant/Husband to pay a sum of Rs.5000/- per month as interim maintenance and a sum of Rs.5000/- towards Litigation Expenses.

5.The Learned counsel for the Appellant submits that the Appellant/Husband is working as Helper in Indian Railways, receiving a salary of Rs.20,119/- per month and the deductions amount of Rs.12,305/- and that the 'Take Home Pay' is only a sum of Rs.7,814/- per month, as per Ex.B1, Salary Certificate.

6.Admittedly, the Appellant/Husband had filed the H.M.O.P.No.392 of 2014 against the Respondent/Wife under Section 13(1)(i.a) of the Hindu Marriage Act, 1955 seeking the dissolution of his marriage that took place on 08.03.2009 with the Respondent/Wife. In fact, the Respondent/Wife had filed a counter to the Original Petition.

7.It is to be remembered that Section 24 of the Hindu Marriage Act, 1955 relating to maintenance, aims at administering justice and maintaining balance between the parties. If the wife has no independent source of income, adequate enough to support herself or enough money to meet necessary expenses of the proceedings, then a Court of Law is empowered to exercise its thinking judicial mind and discretion in determining the monthly maintenance amount to be paid by the husband. No fixed yardstick can be laid down for determining the maintenance sum. No wonder, the sum depends upon the facts and circumstances of a given case, in fixing the quantum of maintenance, the status of the husband is very much material/substantial and not the status of wife's father as opined by this Court.

8.In the present case on hand, the Appellant/Husband's monthly salary as per Ex.B1 was Rs.20,119/-. Further, he works as a Helper in Indian Railways, his deduction amount of Rs.12,305/- per month and the 'Carry Home Pay' of Rs.7814/- per month cannot be a decisive factor to project a plea on the side of Appellant/Husband what he gets as 'Take Home Pay' is only meagre and nominal one to keep his body and soul together.

9.At this stage, this Court significantly points out that an able bodied husband, who works in an Establishment/Organisation is suppose to maintain his wife and to pay maintenance 'Pendente Lite' under Section 24 of the Hindu Marriage Act, 1955.

10.In view of the aforesaid foregoings and discussions and also, this Court on going through the impugned order dated 09.07.2015 in I.A.No.227 of 2015 in H.M.O.P.No.392 of 2014 passed by the Learned Judge, Family Court, Erode does not find any legal infirmities or material irregularities in the eye of Law. Consequently, the Civil Miscellaneous Appeal (filed by the Appellant/Husband) fails.

11.In the result, the Civil Miscellaneous Appeal is dismissed leaving the parties to bear their own costs. Hence, the order dated 09.07.2015 in I.A.No.227 of 2015 in H.M.O.P.No.392 of 2014 passed by the trial Court is affirmed by this Court for the reasons assigned in the Civil Miscellaneous Appeal. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

DP

To

The Family Court,
Erode.

C.M.A.No.2223 of 2015
and

M.P.No.1 of 2015

VGI (CO)
CA(15/10/2015)

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