

In the High Court of Judicature at Madras

Dated : 21.7.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice T.MATHIVANAN

Civil Miscellaneous Appeal No.2076 of 2014 & M.P.No.1 of 2014

R.Manoharan

Vs

...Appellant

1.C.Ramya

2.M.Rakshana (minor), rep.by
mother & natural guardian

C.Ramya

...Respondents

APPEAL under Section 19(1) of the Family Court Act against the order dated 21.10.2013 made in I.A.No.852 of 2012 in O.P.No.3859 of 2011 on the file of the Second Additional Principal Family Court, Chennai.

For Appellant : Mrs.K.Bhavatharini

For Respondents : No appearance

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J

This appeal is filed by the husband questioning the correctness of an order passed by the Family Court, directing him to pay an interim alimony at the rate of Rs.10,000/- per month to the wife and Rs.10,000/- per month to the minor daughter.

2. Heard Mrs.K.Bhavatharini, learned counsel for the appellant. The learned counsel for the respondents was absent on the last occasion. Even today, he is absent. Therefore, we have taken up the matter for disposal.

3. The appellant filed a petition for divorce in O.P.No.3859 of 2011 on the ground of cruelty. The main petition is pending for the past about five years.

4. The wife had taken out an application in I.A.No.852 of 2012 seeking interim alimony both for herself and for her minor daughter. After enquiry, the Family Court passed an order dated 21.10.2013 fixing the interim alimony payable to the wife at Rs.10,000/- per month and to the minor daughter at Rs.10,000/- per month. Aggrieved by the grant of interim alimony, the husband is before us.

5. The main grievance of the appellant is that he is drawing a monthly income of only Rs.33,100/- per month and that he is living at Bangalore. The appellant has a widowed mother, who is staying in Madurai. Therefore, it is the contention of the learned counsel for the appellant that it will be impossible for the appellant to pay Rs.10,000/- each to the wife and the daughter, especially in the given circumstances. It is also the contention of the learned counsel for the appellant that the first respondent had no intention to come and stay with him. Drawing our attention to the counter affidavit filed by the first respondent before the Family Court, it is contended that the first respondent does not deserve any amount as interim alimony.

6. We have carefully considered the grounds of appeal and the contentions raised.

7. The liability of the appellant to pay maintenance is not in doubt. The child was born on 14.2.2009. The first respondent is having the custody of the child. Even if the claim of the appellant that he is drawing only Rs.33,100/- per month is taken to be the gospel truth, he cannot refuse to pay alimony to the first respondent. For deciding the quantum of interim alimony, the Family Court has to go only by the pleadings of parties, as it is in the nature interim relief. Therefore, we are of the considered view that fixing a sum of Rs.5,000/- per month to the first respondent - wife and Rs.5,000/- per month to the second respondent - child, would meet the ends of justice. The appellant can take care of himself as well as his mother, even if this amount, which represents less than 1/3rd of his total income, is ordered.

8. Hence, the civil miscellaneous appeal is allowed modifying the order of the Family Court and fixing the interim alimony payable at Rs.5,000/- (Rupees five thousand only) per month to the wife and Rs.5,000/- (Rupees five thousand only) per month to the daughter. The Family Court is directed to dispose of the main petition within a period of two months. No costs. Consequently, the above MP is closed.

21.7.2015

V.RAMASUBRAMANIAN,J
AND
T.MATHIVANAN,J

RS

Internet : Yes

To
The Second Additional Principal Family Court, Chennai

CMA.(NPD)No.2076/2014
and M.P.No.1 of 2014

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