

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M. VENUGOPAL

C.M.A.No.224 of 2014
and
M.P.Nos.1 of 2014

S.Keerthana ... Appellant/Respondent

Vs.

G.Sridhar ... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act to set aside the orders of the Hon'ble Family Court at Salem made in I.A.No.23/2013 dated 09.07.2013 in F.C.O.P.No.373/2011 and enhance the maintenance and litigation charges as prayed for in I.A.No.23/2013 in FCOP No.373/2011 on the file of the Family Court, Salem.

For Appellant : Mr.A.Thiyagarajan
For Respondent : No appearance
(both counsel and partly)

JUDGMENT

(Order of the Court was made by M. VENUGOPAL, J.)

The Appellant/Wife, has preferred the present CMA as against the order dated 09.07.2013 in FCOP No.373 of 2011 passed by the Family Court, Salem (earlier HMOP No.11/09 on the file of the Family Court, Coimbatore).

2. The Appellant/Wife, is that she had projected I.A.No.23 of 2013 in FCOP No.373/11 on the file of Family Court, Salem, under Section 24 of the Hindu Marriage Act, 1955 to direct the Respondent/Husband to pay the interim maintenance of Rs.25,000/- per month for food, shelter, clothing and medicine and Rs.15,000/- towards litigation expenses from the date of petition till the disposal of the main petition.

3. It is not in dispute that the Respondent/Husband had filed FCOP No.373/11 seeking the relief of divorce on the ground of cruelty. Admittedly, the Appellant/Wife had also filed FCOP No.307/2009, prior to the filing of FCOP No.373 of 2011 by the husband, seeking relief of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.

4. The Learned counsel for the Appellant/Wife, urges before this Court that the family Court, Salem in I.A.No.23 of 2013 In FCOP No.373 of 2011, passed an order directing the Respondent/Husband to pay a sum of Rs.1,500/- per month as interim alimony to the Appellant/Wife from the date of filing of the interlocutory petition till the disposal of the main FCOP and also granted Rs.1,500/- towards litigation expenses.

5. At this stage, the Learned counsel for the Appellant/Wife, projects an argument that the interim maintenance amount of Rs.1,500/- per month awarded in favour of the Appellant/Wife and a litigation expense of Rs.1,500/- awarded by the trial Court, are on the very low side and besides the same being meagre one. Further, they are not good enough to meet out the present day spiralling rise in prices, commodities, inflation, stagflation, etc. As such, the Learned counsel for the Appellant/Wife prays for enhancement of the interim maintenance amount of Rs.1,500/- per month awarded by the trial Court as well as the litigation expenses from Rs.1,500/- to such reasonable sum as this Court may deem fit and proper based on the facts and circumstances of the case, which float on the surface.

6. At this juncture, the Learned counsel for the Appellant/Wife, brings it to the notice of this Court that the Respondent/Husband is working as a Human Resource Manager in a reputed private company and earning not less than Rs.1 lakh per month and as such the Appellant/Wife in her I.A.No.23 of 2013 in FCOP No.373 of 2011 on the file of the Family Court, Salem, had claimed an interim maintenance of Rs.20,000/- per month for food, shelter, clothing, medicine, etc., and also for Rs.50,000/- towards litigation expenses from the date of filing of the interlocutory petition till the disposal of the main petition and they are not in any way an excessive or an arbitrary one.

7. In this connection, this Court pertinently points out that it is evident from the order passed by the trial Court in I.A.No.23 of 2013 in FCOP No.373 of 2011, that a plea was taken that the Appellant/Wife is working as a teacher and the said fact also not been denied. Equally, it is the case of the Appellant/Wife that the Respondent/Husband's avocation/occupation was not denied.

8. As far as the present case is concerned, it is to be borne in mind that in I.A.No.23 of 2013 in FCOP No.373 of 2011 both the Appellant/Wife as well as the Respondent/Husband had not let in any oral and documentary evidence to substantiate or repudiate their

claims/contentions, projected by them. But the factum of the matter is that even without any evidence being let in, the interlocutory application / petition can be disposed of by a Court of Law, based on the affidavits filed by the parties.

9. It is to be relevantly pointed out that where the parties are living apart and the wife's means are insufficient to support herself and her children, she is entitled to alimony pendente lite as per decision Bibi Balbir Kaur Kathuria V. Raghubir Singh Kathuria reported in AIR 1974 Punjab and Haryana at page 225. Moreover, the right of maintenance and the expenses of litigation is conferred on a spouse. It cannot be gainsaid that a Court granting alimony pendente lite has inherent jurisdiction and power to modify, vary its earlier order as per decision Anuradha V. Santosh Nath Khanna reported in AIR 1976 Delhi 246.

10. It is to be noted that the term 'expenses' is of wide connotation and includes 'Costs' but is not limited to costs that would be payable on a party-and-party taxation under the rules of the CMA as per decision Louise Dinshaw Cambata V. Dinshaw S. Cambata reported in AIR 1974 Bomay 82. Added further, reasonable Court-expenses should be granted.

11. Taking note of the fact that the Respondent/Husband, is said to be working as a Human Resource Manager in a reputed private company and earning not less than Rs.1 Lakh per month, this Court is of the considered view that the award of Rs.1,500/- per month towards interim maintenance to the Appellant/Wife from the date of filing of the interlocutory application till the disposal of the main FCOP as well as the award of Rs.1,500/- towards litigation expenses, are meagre ones.

12. Considering the present day inflation, spiralling rise of essential commodities and taking note of the price index and also taking note of a primordial fact that in the present day world, the Appellant/Wife is to keep her body and soul together, this Court deems it fit and proper to increase the interim maintenance of Rs.1,500/- awarded by the trial Court to the Appellant/Wife, per month from the date of filing of the interlocutory petition till the disposal of the main FCOP, to a sum of Rs.7,500/- per month and also this Court that it is just and equitable also to increase the quantum of Rs.1,500/- awarded towards litigation expenses and accordingly, increase the quantum to a sum of Rs.5,000/- towards litigation expenses, to prevent an aberration of Justice and to promote substantial cause of Justice.

13. It is made clear that the aforesaid interim maintenance amount of Rs.7,500/- per month, to the Appellant/Wife from the date of filing of I.A.No.23 of 2013 in FCOP No.373 of 2011 till the disposal of the main FCOP by the trial Court and also a sum of Rs.5,000/- litigation expenses awarded by this Court, are to be paid

by the Respondent/Husband within a period of six weeks from the date of receipt of a copy of this order (of course after deducting amounts already paid if any) and thereafter, continue to pay the interim maintenance awarded by this Court, periodically without fail.

14. Viewed in that perspective, the Civil Miscellaneous Appeal is allowed, without costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judge, Family Court, Salem.

2. The Section Officer, VR Section,
High Court, Madras

+ 1 cc to Mr.A. Thiyagarajan, Advocate Sr.40853

CMA No.224 of 2014

KJI (CO)
Eu 27.08.15

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