

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A. No.1094 OF 2016
& C.M.P. No.8149 of 2016 and
Cross Objection No.50 of 2016

C.M.A. No.1094 OF 2016

V.R.Thirumal ... Appellant/ Respondent in
Cr.Obj.No.50/16

-vs-

V.Samitha ... Respondent/ Cross objector in do

Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, 1984 against the order and decree dated 11.04.2016 made in I.A.No.158 of 2015 in F.C.O.P.No.228 of 2015 on the file of the Family Court, Chengalpattu.

For Appellant : Mr.N.Anand Venkatesh

For Respondent : Mr.Y.Kaja Navas

Cross Objection No.50 of 2016

V.Samitha ... Cross Objector/ Respondent in CMA.1094/16

-vs-

V.R.Thirumal ... Respondent/ Appellant in do

Prayer: Cross Objection filed under Order XLI Rule 22 of C.P.C. against the order dated 11.04.2016 made in I.A.No.158 of 2015 in F.C.O.P.No.228 of 2015 on the file of the Family Court, Chengalpattu.

For Cross Objector : Mr.Y.Kaja Navas

For Respondent : Mr.N.Anand Venkatesh

C O M M O N J U D G M E N T

[Judgment of the Court was made by N. AUTHINATHAN, J.]

Challenge in this appeal is to the order made in I.A.No.158 of 2015 in F.C.O.P.No.228 of 2015 dated 11.04.2016 on the file of the Family Court, Chengalpattu.

2.The appellant in the above Civil Miscellaneous Appeal is the husband of the respondent. He has filed a petition under Section13(1-a) of the Hindu Marriage Act, for divorce on the ground of cruelty in F.C.O.P.No.228 of 2015 before the Family Court, Chengalpattu. Pending disposal of the Original Petition, the wife filed a petition in I.A.No.158 of 2015 in F.C.O.P.No.228 of 2015 under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance at the rate of Rs.15,000/- and for Rs.15,000/- towards litigation expenses.

3.The husband opposed the claim. According to him, he has resigned his job on account of intolerable embarrassment caused by his wife by staging a Dharna at his work place. He has resigned his job and now he is unemployed. He has further contended that his wife is working as a Lecturer in Meenakshi Ammal Teacher Training College, Uthiramerur. She possessed M.Sc., M.Phil., M.Ed., degrees. she is a qualified Teacher and making money by teaching students at home. She has left the matrimonial home on her own volition and as such, the husband would not be liable to pay any maintenance.

4.The Trial Court has granted a sum of Rs.4,000/- per month towards maintenance and also directed the appellant to pay a sum of Rs.5,000/- towards litigation expenses. Aggrieved by the order, the husband preferred the Civil Miscellaneous Appeal and the wife has filed Cross objections. She prayed for enhancement of maintenance amount from Rs.4,000/- to Rs.15,000/-. She has also prayed for enhancement of litigation expenses. Her case is also that the maintenance amount fixed by the trial Court would hardly be sufficient to make both ends meet, that these are days of escalating cost of living and that her husband has the requisite wherewithal to pay much more than that had been fixed by the trial Court.

5.The parties are Hindus. Their marriage was solemnized on 20.08.2010. The spouses are living apart considerably for a long period. It is the case of the wife that she has no independent income, sufficient for her support and to meet the expenses of the proceedings. The appellant would contend that the respondent is working as a Lecturer in Meenakshi Ammal Teacher Training College, Uthiramerur. He relied on their marriage invitation, wherein it has been shown that his wife is a Lecturer. However,

this invitation is of the year 2010. There is no record to show that she was a permanent employee of the College, wherein, she purports to have been working at the time of marriage. Now she has come forward with a case that she is unemployed and as such, she has no independent source of income. Her case has not been effectively rebutted by the husband. It is not unlikely that a person, who had been employed in the year 2010, could have been rendered unemployed over a period of time for various reasons. In the facts and circumstances, we only hold that as of now, there is no independent income for her. Even though, it is contended that she is earning by teaching at home, there are no concrete material placed before the Court in proof of this contention. In any view of the matter, the liability of the husband to maintain his wife would not abate.

6.The next contention of the learned counsel for the appellant/husband is that the respondent/wife staged a dharna in the premises where the husband was working and thereby caused embarrassment to the husband, he had to resign his job and he is now unemployed. However, it is not the case of the husband that he was dismissed by his employer on account of the conduct of the wife. It is his case that he has voluntarily resigned his job. This could not be a ground for denying maintenance to his wife. He can seek employment elsewhere. He has got to earn money for his subsistence as also for his wife. The husband cannot shirk his responsibility. We are of the view that the trial Court viewed the matter in the correct perspective and the conclusion arrived at could not be faulted.

7.The wife seeks enhancement of maintenance amount. In this connection, the learned counsel relied upon a decision in Annurita Vohra vs. Sandeep Vohra [(2004) 18 AIC 810]. In that case, the Court found that the net disposable income of the husband was Rs.32,000/-per month. Therefore, a sum of Rs.15,000/- was ordered to be paid as maintenance to the wife and to a minor child. In the case at hand, the wife alone claims maintenance. According to the respondent/wife, the appellant/husband was earning Rs.40,000/-per month. However, there is no material to hold that the disposable income of the appellant/husband was Rs.40,000/-per month. The wife possessed M.Sc., M.Phil., M.Ed., degrees. The wife, being a qualified teacher, could also aspire for employment and get employed. This has to be taken into account for the purpose of arriving at the quantum of maintenance.

8.As to the quantum and litigation expenses, having regard to the materials available on record, we are of the considered view that the quantum arrived at by the trial Court would deserve to be upheld. The trial Court, in exercise of its discretion, granted maintenance and fixed the quantum. We are satisfied that the trial Court has exercised its discretion

correctly. There are no grounds warranting interference in the impugned order.

9.In the result, the Civil Miscellaneous Appeal and the Cross Objection are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

sri/sr

To
The Family Court,
Chengalpattu.

1 cc to Mr.N. Anand Venkatesh, Advocate, Sr. 58097

1 cc to Mr.Y. Kaja Nivas, Advocate, sr. 58728

C.M.A. No.1094 OF 2016
and C.M.P. No.8149 of 2016
Cross Objection No.50 of 2016

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