

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.ATHINATHAN

C.M.A.No.2079 of 2016
C.M.P.No.14231 of 2016

S.Megavannan ..Respondent/ Petitioner /Appellant
versus

S.Brindha ..Petitioner/Respondnet/Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act 1984 against the Fair and decreetal, dated 03.06.2015 made in I.A.No.15 of 2014 in H.M.O.P.No.48 of 2014, on the file of the Family Court, Erode.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.S.Kaithamalai Kumaran

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Challenge in this appeal is to the order, made in I.A.No.15 of 2014 in H.M.O.P.No.48 of 2014, dated 03.06.2015, on the file of the Family Court, Erode, by which, an interim maintenance of Rs.10,000/-, has been ordered to the wife, to be paid, on or before 5th of every month. Litigation expenses of Rs.5,000/- has been ordered. Arrears have been directed to be paid, within three months, from the date of passing of the order.

2. Material on record discloses that appellant-husband has filed H.M.O.P.No.48 of 2015, for divorce. Contending inter alia, that out of the wedlock, a girl child, Devashruthi, was born on 23.03.2001 and that the respondent-wife has no source of income, to meet out the expenses to maintain herself and the child, I.A.No.367 of 2012 in H.M.O.P.No.48 of 2015, has been filed, claiming interim maintenance of Rs.25,000/- per month and Rs.25,000/- for litigation expenses. In the said I.A., the respondent-wife has further contended that the appellant-husband did not take care to see the child and herself. The appellant-

husband is working as a Project Leader in Mahindra Satyam Company, Chennai and earning Rs.65,000/- per month, as salary. Further contention has also been made that the appellant-husband has agricultural lands in R.S.Nos.21/5, 21/9, 21/10B, 21/10G, 407/14 in Periyapatti Village in Namakkal District, measuring 6.51 Acres. Besides, he has a vacant site in the same village, measuring 30.098 and half Sq.Ft. The respondent-wife has contended that the appellant-husband is earning not less than Rs.25,000/- from agricultural properties and on the whole, getting Rs.90,000/- per month.

3. Opposing the petition for maintenance, appellant-husband has contended that he is the only earning member in his family. He has to spend Rs.35,000/- per month, for family expenses and himself. Apart from the above, he has to pay Rs.10,000/- towards interest, for the loan obtained by him, for his education. He has to clear the bank loan. He has stated that his salary is Rs.35,219/- per month only, and hence, cannot pay Rs.25,000/- as interim maintenance. He has also stated that he does not derive any income from the agricultural properties. That part, the property is under mortgage.

4. Before the Family Court, the appellant-husband has further contended that the respondent-wife has taken 10 Sovereigns of jewels and that his job is not permanent. He is taking treatment for back pain. He has no knowledge of the birth of child. The respondent-wife is doing job work and earning Rs.20,000/- per month. The appellant-husband has further contended that both the respondent-wife and her mother, have landed properties, measuring 3 Acres in Sengapalli Village and 1 Acre in Vagurampatti Village, 5 Acres in Lathuvadi Village, wherein, cash crops are grown regularly and getting huge income. Respondent-wife has put up a new building in Periya Semur Village of Erode District. Mother of the respondent-wife is a staff nurse, getting Rs.40,000/- per month. According to the husband, the respondent-wife has voluntarily deserted him and made a false complaint to the police. For the abovesaid reasons, the appellant-husband has prayed for dismissal of the interim maintenance petition.

5. The respondent-wife has filed a reply to the counter affidavit filed by the appellant-husband, denying the averments, in particular, income derived from the agricultural properties. She contended that the properties at Sengapalli Village, Vagurampatti Village and Periya Semur Village, mentioned in the counter affidavit, do not belong to her and it belongs to her paternal grand mother, maternal uncle and mother respectively and that she has no rights over the said properties. Hence, she has prayed for maintenance before the Family Court.

6. Before the Family Court, two documents, viz., Pagakaraar Pathiram and Complaint receipt, have been marked, on the side of the respondent-wife. Appellant-husband examined himself as RW.1 and marked Ex.R1 - Marriage Invitation, Ex.R2 - Marriage Registration Certificate, Ex.R3 - Marriage Receipt, Ex.R4 - HDFC Disbursement Advice, Ex.R5 -SBI Letter, Ex.R6 - House Rental Deed, Ex.R7 - Mess Bill, Ex.R8 - Vijaya Bank Letter, Ex.R9 - M.S.M. Travels Confirmation Letter, Ex.R10 - Cash Bill, Ex.R11 - M.G.M. Travels, E-Ticket, Ex.R12 - Namakkal to Chennai bus ticket, Ex.R13 - HDFC Bank Disbursement Advice, Ex.R14 - Complaint, Ex.R15 - Reply Notice and Ex.R16 - Complaint.

7. During trial, I.A.No.367 of 2012 in H.M.O.P.No.48 of 2015, filed on the file of the Ist Additional Subordinate Court, Erode, has been transferred to Family Court, Erode. On evaluation of the pleadings and evidence, the Family Court, Erode, vide order, dated 03.06.2015, in I.A.No.15 of 2014 in H.M.O.P.No.48 of 2014, directed interim maintenance and litigation expenses, as stated supra.

8. Material on record discloses that pursuant to the order, dated 03.06.2015, the appellant-husband has paid a sum of Rs.10,000/-, through Demand Draft, towards interim maintenance, as directed by the Family Court, Erode, without prejudice to his rights.

9. Assailing the correctness of the interim maintenance and litigation expenses, Mr.R.Karthikeyan, learned counsel appearing for the appellant-husband submitted that the Family Court has erred in coming to the conclusion that the appellant-husband has failed to prove by adducing evidence that the respondent-wife has got agricultural lands and deriving income of Rs.20,000/- per month. He submitted that the appellant-husband has been denied of an opportunity to cross-examine the respondent-wife, on the aspect of her salary, income from agricultural lands. He further submitted that the Family Court, without providing the appellant-husband an opportunity to produce pay slip, has straight away granted the interim maintenance of Rs.10,000/-, solely on the basis of his job. He also submitted that the Family Court ought to have seen that the respondent-wife has not filed any proof affidavit and thus, failed to prove her case that she has no means to maintain herself and the child.

Heard the learned counsel appearing for the appellant and perused the materials available on record.

10. Marriage is not disputed. According to the appellant-husband, birth of the child was not informed to him. Separate living is also admitted. Grounds for divorce is cruelty and therefore, the Family Court has observed that the contention of voluntary desertion cannot be addressed in the petition for

interim maintenance. The Family Court has observed that though the appellant-husband had contended that the respondent-wife is doing job work and getting more than Rs.20,000/- per month, the same was not proved. Therefore, in the absence of any materials, regarding employment and income earned by the respondent-wife, the Family Court held that the respondent-wife has no source of income to maintain herself and the child.

11. Perusal of the impugned order shows that after arriving at the abovesaid conclusion and taking note of the avocation of the appellant-husband, as Project Leader of a Company, the Family Court wanted to ascertain his actual income. The appellant-husband has not chosen to produce his salary certificate, despite the direction granted by the Family Court on 15.04.2015 to produce his pay slip for the month of March' 2015. Despite two other adjournments, the same has not been produced. In the abovesaid circumstances, taking note of the nature of the duties and position of the inter-se parties and considering the present day situation, the Family Court has ordered interim maintenance of Rs.10,000/-, from the date of petition, to be paid on or before 5th of every month and litigation expenses of Rs.5,000/-. Arrears amount has been directed to be paid within three months, from the date of passing of the order.

12. Though Mr.R.Karthikeyan, learned counsel for the appellant-husband assailed the correctness of the order, on the grounds that the respondent-wife has not filed any proof affidavit and not let in oral evidence, so as to enable the appellant-husband to cross-examine her and that therefore, the Family Court has failed to consider that when the respondent-wife has failed to prove her case, interim maintenance ought not to have been ordered, this Court is not inclined to accept the said contention for the reason that whatever, the appellant-husband has submitted before the Family Court, regarding the means of the respondent-wife, to maintain herself and the child, the same has not been substantiated.

13. During enquiry, before the Family Court, the appellant-husband has admitted that he is working as a Project Leader in Mahindra Satyam Company, Chennai. Though the appellant-husband has contended that he was getting only Rs.35,000/- per month, he has not produced the pay slip, in spite of the directions issued by the Family Court. Admittedly, since 23.03.2011, the child is with her mother. Though the appellant-husband has contended that the respondent-wife has voluntarily deserted him, the learned Family Court has rightly observed that divorce sought for, is on the ground of cruelty and hence, the same cannot be given weightage in the interim maintenance petition.

14. From the perusal of the order impugned in this appeal, nothing is indicated that the appellant has even thought of paying some amount towards the maintenance of his wife. To provide food, shelter, clothing and other basic necessities, one needs a reasonable amount.

15. Though the learned counsel for the appellant-husband contended that the interim maintenance of Rs.10,000/- has been fixed, solely considering the nature of the appellant-husband's job, as a Project Leader of a Company and the present economic condition, the said reasoning of the Family Court, cannot be said to be irrational for interfering with the impugned order. Though the appellant-husband has marked documents to prove his case that he has to incur expenditure for his family and himself and also pay interest towards the loan obtained by him, for education, that would not absolve his moral and legal obligation to maintain his wife, when they have no means.

16. Though the impugned order has been passed on 03.06.2015, with directions to pay the entire arrears of interim maintenance, within three months, from the date of passing of the order and also the interim maintenance of Rs.10,000/- per month, on or before 5th of every month, without prejudice to his rights, the appellant-husband has sent a letter, dated 23.07.2015, along with a Demand Draft to the tune of Rs.10,000/-. Thereafter, no payment has been made.

17. Impugned order, granting Rs.10,000/- as interim maintenance to the respondent-wife, cannot be said to be on the higher side, warranting interference. Lastly, the submission of the learned counsel for the appellant for non-payment of maintenance order, H.M.O.P.No.48 of 2014 filed by the husband, has been dismissed, is placed on record.

18. In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Asst.Registrar (CS VII)

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Sub Asst. Registrar

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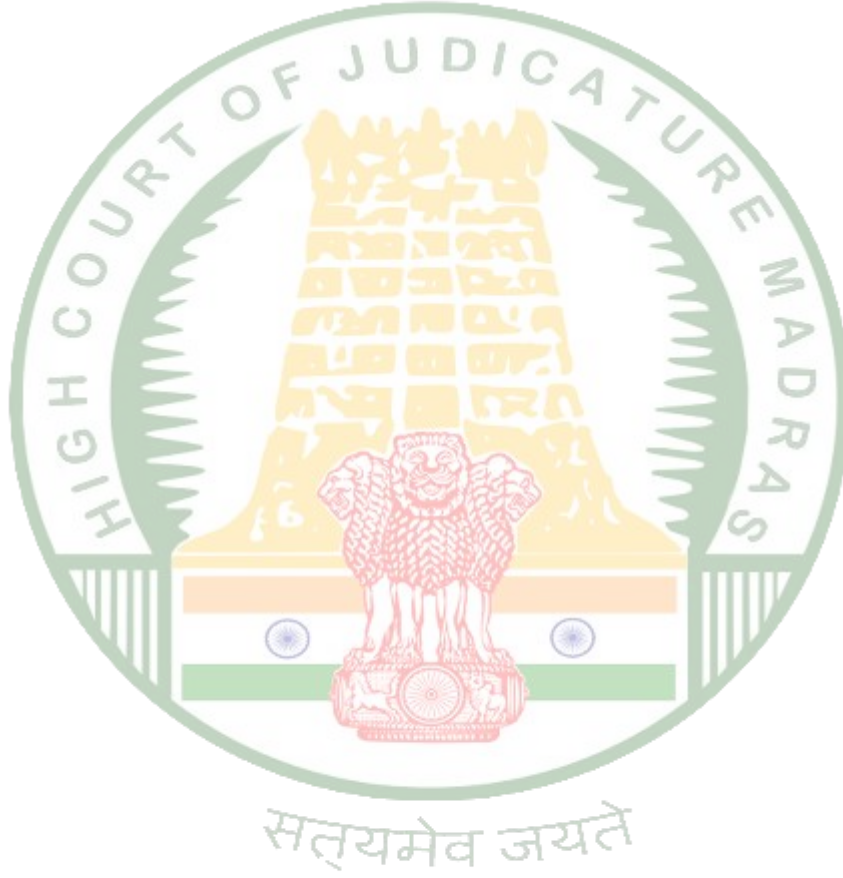
To

The Family Court,
Erode.

1 cc to M/s.R. Karthikeyan, Advocate, sr. 54626
1 cc to M/s.S. Kaithamalai Kumaran, Advocate, Sr. 54819

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