

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.2333 of 2016
and
C.M.P.No.16371 of 2016

Mr.Vimal VaidyanathanPetitioner

Vs.

Mrs. R.Lavanya ..Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act against the order and decree, dated 10.3.2016 made in I.A.No.1296 of 2015 in O.P.No.3898 of 2014 on the file of Principal Judge, Family Court, Chennai.

For Petitioner : M/s.S.S. Rajesh
For Respondent : Mr.K.R. Neelambar

JUDGMENT

[Judgment of the Court was made by M. JAICHANDREN, J]

This Civil Miscellaneous Appeal has been filed against the order of interim maintenance, dated 10.3.2016, passed by the learned Principal Judge, Principal Family Court, Chennai, in I.A.No.1296 of 2015, in O.P.No.3898 of 2014.

2. The main contention raised by the learned counsel appearing on behalf of the appellant is that the appellant is in a depressed state, as he had lost his job, and the respondent, who is his wife, has filed the Original Petition, in O.P.No.3898 of 2014, praying for a decree of divorce against the appellant.

3. It has been further stated that the appellant is suffering from hypertension. He had further submitted that no document has been filed by the respondent to show that the appellant is working.

4. The learned counsel appearing on behalf of the appellant had further submitted that if any proof, showing the independent source of income of the wife is filed before the Court, then it is not open to the Court concerned to order maintenance against the husband to maintain his wife.

5. In support of his contention, he has relied on the decision, reported in (2002) 2 M.L.J.760 (Kumaresan vs. Aswathi).

6. However, the said contention of the learned counsel appearing on behalf of the appellant cannot be accepted as no proof showing the independent source of income of the wife had been produced before the Family Court concerned.

7. It is also noted that the wife of the appellant had filed an interlocutory application, in I.A.No.1296 of 2015, in O.P.No.3898 of 2014, praying for a sum of Rs.10000/-, as interim maintenance, from the appellant.

8. However, the family court concerned, having considered all the relevant factors had come to the conclusion that the appellant ought to pay a sum of Rs.4500/- p.m., to the respondent, as interim maintenance.

9. It is also noted that it is the contention of the learned counsel appearing on behalf of the respondent that the appellant had voluntarily left his job. Therefore, it is not open to the appellant to claim that he is not earning any income to maintain the respondent.

10. Even though the learned counsel appearing on behalf of the appellant had submitted that the appellant is suffering from illness and that it is not possible for him to earn any income, we are of the view that these are all the issues to be agitated before the family Court concerned, by letting in evidence, during the course of the trial.

In such circumstances, we do not find any merit in the present appeal. Hence, the Civil Miscellaneous Appeals stands dismissed. No costs. Connected M.P. is also dismissed.

s/d-
Assistant Registrar(CS-VI)

//True Copy//

Sub-Assistant Registrar

To

1. The Principal Judge,
Family Court, Chennai

+2 Ccs to M/s. S.S. Rajesh Advocate sr 69132

+2 Ccs to M/s. K.R. Neelambar, Advocate sr 69491

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RP (CO)
sp/9/2



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