

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal No.2905 of 2015

Padma Priya ... Appellant/Petitioner

vs.

M.Shriraman ...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decretal order of the III Additional Principal Judge, Family Court, Chennai dated 08.03.2013 passed in I.A.No.3444 of 2011 in O.P.No.1838 of 2009 and seeking enhancement of the quantum of maintenance awarded as prayed for in the petition for maintenance.

For Appellant : Mr.M.K.Kabir, Senior Counsel
for Mr.T.Jayaraman

For Respondent : Mr.D.Rajagopal

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

Aggrieved by the order dated 08.03.2013 passed by the III Additional Principal Judge, Family Court, Chennai, in I.A.No.3444 of 2011 in O.P.No.1838 of 2009 granting lesser maintenance, the wife has come forward with the above Civil Miscellaneous Appeal.

2. The III Additional Principal Judge, Family Court, has awarded a sum of Rs.8,000/- per month as interim maintenance apart from litigation expenses of Rs.3,000/- and the maintenance amount was directed to be paid on or before 5th of every English Calendar month.

3. The case of the appellant/wife is that the respondent/husband is drawing salary of more than Rs.60,000/- per month and therefore, she is entitled to a sum of Rs.20,000/- per month as maintenance.

4. Learned counsel appearing for the respondent/husband would submit that the respondent has filed a petition for divorce in O.P.No.1838 of 2009 and the same is pending. He would contend that the appellant/wife had removed Mangalyam more than once, when she and her husband, the respondent herein were living in a separate house and that false case has been registered against the respondent with an intention to cause mental torture. It is his further contention that the amount claimed as interim maintenance is exorbitant and that the respondent is willing to spend money towards maintenance of the child alone, but the appellant/wife is not entitled to get any amount, as she is responsible for the present situation.

5. On a perusal of the pleadings, the Trial Court, taking note of the fact that the appellant/wife has filed a petition for restitution of conjugal rights in O.P.No.1582 of 2010 and the respondent/husband has filed a petition in O.P.No.1838 of 2009 seeking divorce, and also considering the aspect that though the respondent/husband has admitted that he was employed in HCL, the appellant/wife did not prove that he was earning a sum of Rs.60,000/- per month, directed the respondent/husband to pay a sum of Rs.8,000/- as interim monthly maintenance to the appellant/wife from 20.04.2012 payable on or before 5th of every calendar month, apart from litigation expenses of Rs.3,000/-.

6. The aforesaid facts are not in dispute. As there is a matrimonial issue pending between the appellant/wife and the respondent/husband for restitution of conjugal rights and dissolution of marriage respectively before the Family Court, a sum of Rs.8,000/- ordered as interim maintenance cannot be said to be excessive.

7. Both the parties agreed for early disposal of both the OPs. But, it is pleaded by Mr.Kabir, learned Senior Counsel, that the wife is suffering from serious ailments, for which, he produced medical records and pleaded that she needs some time to recuperate from the illness. We have considered the said plea and the respondent/husband is agreeable to participate in the day-to-day proceedings in the OPs filed by both sides from the appropriate date as may be fixed by this Court.

8. The wife seeks enhancement of maintenance. The husband wants early disposal of the petition for dissolution of marriage. The allegation of delay has been made by both sides. Considering the fact that the appellant/wife is living away from the respondent/husband along with a child and taking note of the cost of living, we are inclined to modify the payment of maintenance pending disposal of the two OPs, namely O.P.No.1582 of 2010 and O.P.No.1838 of 2009 in the manner herein below stated.

(i) the respondent/husband shall continue to pay a sum of Rs.8,000/- per month as interim maintenance to the appellant/wife till July 2016. He shall however pay a sum of Rs.10,000/- per month from August 2016 till the disposal of the Original Petitions pending before the Family Court, preferably within six months from 1st August 2016.

(ii) the III Additional Family Court, Chennai, is directed to take up the cases in O.P.No.1838 of 2009 and O.P.No.1582 of 2010 and proceed with the trial on a day-to-day basis and decide the same, as expeditiously as possible, in view of the multiple ailments of the appellant/wife as could be seen from the Medical Reports produced by the learned Senior Counsel appearing for the appellant/wife. It is also made clear that the matter shall not be adjourned beyond two working days at any point of time;

(iii) If, for any reason whatsoever, the matter prolongs at the behest of the appellant/wife, the further interim maintenance amount as ordered in paragraph 8(i) in an amount of Rs.10,000/- shall stand reduced to a sum of Rs.8,000/- w.e.f. 01.02.2017. In case, the adjournment is sought on and after 01.02.2017 at the behest of the respondent/husband, the interim maintenance amount shall stand enhanced to a sum of Rs.12,000/- w.e.f. 01.02.2017.

(iv) Adjournment shall be granted by the Trial Court only based on the petition filed by the parties and the Trial Court is requested to expedite the case;

The Civil Miscellaneous Appeal is disposed of in the above terms. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To :

The III Additional Principal Judge,
Family Court,
Chennai.

+1cc to Mr.D.Rajagopal, ADvocate Sr.15644

C.M.A.No.2905 of 2015

rsi (CO)
srg (31/03/2016)



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