

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

C O R A M

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

C.M.A.No.3646 of 2014
and
M.P.No.1 of 2015 & 1 of 2014

D.Swaminathan Appellant/Petitioner

Vs

Sowmiya ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, 1984 (Central Act No.66 of 1984) against the order of the Principal Family Court at Chennai dated 04.01.2014 passed in I.A.No.1415 of 2012 in O.P.No.3596 of 2011.

For appellant : Mr.R.Manivannan

For respondent : Mr.D.Balaraman

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This appeal has been filed by the Husband questioning the correctness of the order of the Principal Family Court, Chennai, directing to pay interim maintenance of Rs.10,000/- per month to the respondent-wife.

2. The appellant and the respondent got married on 13.04.2009 and due to some misunderstanding, they are living separately. The husband filed F.C.O.P.No.3596 of 2011 under Section 13(1)(a) of Hindu Marriage Act, 1955 seeking for divorce on the ground of cruelty.

3. In the said F.C.O.P.No.3696 of 2011, the wife has filed I.A.No.1415 of 2012 seeking for a direction to the respondent to pay a sum of Rs.20,000/- per month towards interim alimony from

the date of separation i.e, 03.08.2011 and also sought for a sum of Rs.20,000/- as litigation expenses. In the said I.A., husband/appellant herein filed counter affidavit stating that wife/respondent, is working in a MNC company and drawing a salary of Rs.50,000/- per month. It is further stated that she concealed her physical defects and trying to plunder his life by way of demanding interim maintenance. Thereafter, an Additional Counter has also been filed by the husband listing out his monthly expenses amounting to Rs.32,074/- and as such, he could not meet out his other expenses relating to food and dress with the left over sum. He further stated that the respondent/wife is earning Rs.25,000/- per month and staying in her parents house.

4. After perusing the averments made on both sides, the Principal Family Court, passed an order dated 04.01.2015 in I.A.No.1415 of 2012, on the following terms:-

" 11. In the result, this petition is allowed and the respondent is directed to pay a sum of Rs.10,000/- per month to the petitioner as interim maintenance from the date of this petition viz., 05.06.2012 till the disposal of main O.P. Respondent is further directed to pay Rs.10,000/- to the petitioner towards the litigation expenses."

5. As against the said order dated 04.01.2015, this C.M.A., has been filed by the husband inter alia contending that he was not given sufficient opportunity to cross-examine the respondent to prove the fact that she is having sufficient earnings to maintain herself. He also stated that his available funds is only Rs.10,220/- per month and in the said sum, he has to maintain his other needs and aged parents.

6. Learned counsel appearing for the appellant-husband, reiterated his submissions based on the grounds of the C.M.A., and would further state that the appellant is facing serious financial difficulty.

7. Learned counsel for the respondent-wife submitted that the respondent is a house wife and has no source of income. He further submitted that the respondent is undergoing financial difficulty and the objection raised by the appellant for paying the interim maintenance, who is a working in a good concern and getting a good salary, about Rs.50,000/- per month, is not at all tenable.

8. Heard Mr.R.Manivannan, learned counsel for the appellant and Mr.D.Balaraman, learned counsel for the respondent.

9. Having considered the rival contentions put forth on both sides and reserving the rights of both the parties to proceed with the main O.P. before the trial court, now, by consent of both sides, the order of the Principal Family Court in I.A.No.1415 of 2012 is modified as follows:-

"a. The appellant/husband is directed to pay a sum of Rs.6,000/- per month (Rupees Six Thousand only) as interim maintenance to the respondent/wife, instead of Rs.10,000/- as ordered by the trial court and the same shall be paid by the appellant from the date of petition viz., 05.06.2012 till the disposal of main O.P..

b. The parties are directed to cooperate for the early disposal of the main F.C.O.P.

c. The appellant shall also make an endorsement in the main O.P., to the effect that he has no objection for the wife to withdraw the sum ordered by this court. "

10. Insofar as litigation expenses are concerned, the order of the trial court dated 04.01.2014 stands confirmed. If the appellant/husband has paid over and above the modified interim maintenance as now ordered by this Court from the date of I.A., the same shall lie into the credit of the F.C.O.P., which shall be adjusted for future interim maintenance payments.

11. This C.M.A., is ordered on the above terms. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Principal Judge,
Family Court,
Chennai.

+lcc to Mr.D.Balaraman, Advocate, S.R.No.7682

+lcc to Mr.R.Manivannan, Advocate, S.R.No.7562

C.M.A.No.3646 of 2014

TEJ(CO)

CA(07/03/2016)