

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.01.2016

CORAM:

THE HON'BLE Mr.JUSTICE S.TAMILVANAN
and
THE HON'BLE Mr.JUSTICE G.CHOCKALINGAM

C.M.A.No.769 of 2014
and
M.P. No.1 of 2014

M.Kannan ... Appellant/Respondent

Vs.

V.Shanthalakshmi ...Respondent/Petitioner

Civil Miscellaneous Appeal, filed under Section 19 of the Family Court Act against the fair and decretal order, dated 07.12.2013, passed in I.A.No.59 of 2013 in O.P.No.1945 of 2012 on the file of the III Additional Judge, Family Court, Chennai.

For Appellant : Mr.P.Babu
For Respondent : Mr.K.S.Kumar

JUDGMENT

(Order of the Court was made by S.TAMILVANAN, J)

Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

2. Challenging the order dated 07.12.2013 in I.A.No.59 of 2013 in O.P.No.1945 of 2012 on the file of the III Additional Family Court, Chennai, the Civil Miscellaneous Appeal has been preferred by the appellant/respondent, who is none other than the husband of the respondent herein. As per the Impugned order, dated 07.12.2013, the III Additional Family Court has directed the appellant herein who is the husband of the respondent, to pay a sum of Rs.5,000/- per month as interim maintenance in favour of the respondent herein apart from Rs.5,000/- towards litigation expenses. Aggrieved by which, the appeal has been preferred by the husband of the respondent.

3.It is brought to the notice of this Court by the learned counsel for the respondent that on 25.03.2014 while admitting

the Civil Miscellaneous Appeal, in M.P.No.1 of 2014, an order of interim stay was granted on the following conditions:

[a] The petitioner/husband is directed to pay the entire arrears of maintenance amount @ Rs.3,500/- per month as against Rs.5,000/- awarded by the Court below, from the date of petition till February 2014 within a period of four weeks from today to the respondent/wife.

[b] The maintenance amount of Rs.3,500/- for the month of March 2014, should be deposited by the petitioner/husband to the credit of O.P.No.1945/2012 on the file of the learned III Additional Judge, Family Court, Chennai, on or before 7th of April 2014.

[c] The maintenance amount for the period commencing from April 2014 should be deposited by the petitioner/husband to the credit of OP.No.1945/2012 on the file of the learned III Additional Judge, Family Court, Chennai on or before 7th of every succeeding English Calendar month without fail.

[d] The respondent/wife shall withdraw the monthly maintenance amount from the Court below on filing appropriate petition before the Court concerned.

[e] It is made clear that failure on the part of the petitioner/husband to deposit the arrears of maintenance as well as any one of the monthly maintenance, would result in the interim stay granted by this Court today, vacated automatically, without any further reference to this Court.

4. In the above order dated 25.03.2015, it was made clear that on failure of compliance of the conditional order, the interim stay shall stand vacated automatically. As per the interim order passed in M.P.No.1 of 2014, the Bench directed the appellant to pay maintenance at the rate of Rs.3,500/- per month to the respondent till the disposal of this appeal.

5. According to the learned counsel for the respondent, the appellant is a Software Engineer working as Team Leader in Multi National Company and getting enough salary. However, the learned counsel for the appellant disputed the said contention of the learned counsel appearing for the respondent stating that the appellant subsequently resigned his job, however such a defence cannot be decided in this Civil Miscellaneous Appeal.

6.Having gone through the entire evidence and materials available on record, we are of the view that the Court below has reasonably passed the maintenance at the rate of Rs.5,000/- per month apart from awarding of Rs.5,000/- towards litigation expenses which cannot be constrained as exorbitant amount. We are unable to accept the contention of the appellant that he has resigned the post from the Multi National Company and now he is unemployed. It is open to him to get any employment being a software engineer. Having considered the educational qualification and other aspects, we are of the view that the appellant is capable of paying the award amount of Rs.5,000/- apart from the litigation expenses as decided by the court below. It is also brought to the notice of this Court by both the learned counsel, that the appellant and the respondent are close relatives. Hence, it is open to them to get reunion or to restore their matrimonial relationship or some other amicable settlement, hence, the same need not be decided on this Civil Miscellaneous Appeal.

7.Having considered the facts and circumstances and evidences available on record, we are of the view that the Court below has reasonably awarded the maintenance at the rate of Rs.5,000/- per month apart from litigation expenses. On the aforesaid circumstances, we hold that there is no merit in this Civil Miscellaneous Appeal and the same is liable to be dismissed.

8.In the result, the Civil Miscellaneous Appeal is dismissed confirming the order and decreetal order dated 07.12.2013 made in I.A.No.59 of 2013 in O.P.No.1945 of 2012 on the file of the III Additional Family Court, Chennai. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

To

1. The III Additional Judge,
Family Court, Chennai.

2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.P.Babu, Advocate, S.R.No.3051
+1cc to Mr.K.S.Kumar, Advocate, S.R.No.3010

C.M.A.No.769 of 2014
and
M.P. No.1 of 2015

kk (CO)
srg (18/02/2016)



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