



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2016

CORAM:

WEB COPY

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.M.A. (MD) No.119 of 2016

and

C.M.P. (MD) No.2000 of 2016

Suresh

... Appellant

Vs.

Anushia

... Respondent

PRAYER: The Civil Miscellaneous Appeal filed under Section 55 of Divorce Act, against the fair and decreetal order passed in I.A.No.334 of 2015 dated 27.01.2016 in D.O.P.No.187 of 2014 on the file of the learned District Judge, Kanyakumari Division at Nagercoil.

For Appellant : M/s.A.Elis Chitra Devi

For Respondent : Mr.M.P.Senthil

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order dated 27.01.2016 in I.A.No.334 of 2015 in I.D.O.P.No.187 of 2014 passed by the learned District Judge, Kanyakumari Division at Nagercoil.

2.The petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 15.11.2012. A male child was born on 14.08.2013 in the wedlock. Due to some dispute, the respondent left the matrimonial home. Whiles, the petitioner / husband filed a petition in I.D.O.P.No.187 of 2014 before the District Court, Kanyakumari Division at Nagercoil, for divorce. The respondent / wife has filed a counter statement. She also filed a petition in I.A.No.334 of 2015 prayed for a direction to the petitioner / husband to pay Rs.15,000/- per month as interim alimony and Rs.10,000/- towards litigation expenses. The Trial Court by order dated 27.01.2016, directed the petitioner / husband to pay a sum of Rs.8,000/- per month as interim alimony to the respondent / wife from the date of filing of the I.D.O.P.No.187 of 2014 and Rs.10,000/- towards litigation expenses.



3. Challenging the order dated 27.01.2016 in I.A.No.334 of 2015 in I.D.O.P.No.187 of 2014 passed by the learned District Judge, Kanyakumari Division at Nagercoil, the present Civil Miscellaneous Appeal has been filed.

WEB COPY

4. The learned counsel appearing for the petitioner / husband contended that without any basis, the Lower Court directed the petitioner to pay a sum of Rs.8,000/- per month as interim alimony and Rs.10,000/- towards litigation expenses. The learned counsel submitted that the respondent / wife is having qualification in Teacher Training and that, she is earning Rs.10,000/- per month by way of taking tuition. The learned Judge failed to consider that the parents of the respondent are having sufficient means to maintain the respondent. He further submitted that due to the attitude of the respondent / wife and her parents, the petitioner / husband lost his job in IBM and now he is working in a small company getting meagre income. Hence, the order passed by the Lower Court is not sustainable.

5. The learned counsel appearing for the respondent / wife submitted that the lower court is right in ordering interim maintenance from the date of IDOP filed by the petitioner. The learned counsel for the respondent relied on a decision reported in **1999(1) MLJ 734 (Selvamurthy Vs. Thirupura Sundari and another)**, wherein this Court has held as follows:

"32. In this case, petitioner has not pleaded that by granting interim alimony from the date of petition, he will be put to great hardship and his financial position will be seriously affected if he is directed to pay any amount of alimony. The obligation of the husband to maintain his wife in view of the status, which is now given a statutory recognition. Refusing to maintain for a long time and when wife files an application to get maintenance, she only reminds the court that husband has not discharged his marital obligations. Merely because the application was filed belatedly that will not take away the right of the wife in getting maintenance from the date of service of summons. In this case, she herself is petitioner. So that question does not arise. That is why lower court fixed it from the date of main application.

33. As we held by Hon'ble Supreme Court, it is the discretion which the court has to exercise taking into consideration various circumstances. It is true that Hon'ble Supreme Court has held that the honesty of purpose in both sides must be shown. In this case, except the statement that wife has left the matrimonial home and she is being maintained by her parents well by them, there is no serious contentions.



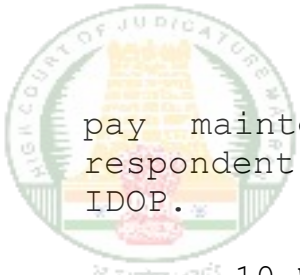
The honesty of purpose of wife cannot be questioned. When there is an allegation that her husband is living with another woman, naturally she is entitled to live separately and claim maintenance. The conduct of wife also do not show that she is not entitled to get maintenance from the date of application. When normal rule is wife is entitled to get maintenance from the date of service of summons, it is for the husband to prove that this normal rule should not be followed taking into consideration the factors stated by the Hon'ble Supreme Court. Except for there is a delay in filing application for interim alimony, I do not filing any other circumstances against wife. As I said, husband has not pleaded that if interim alimony is granted from the date of application, he will be put to great hardship. When he has filed to maintain his wife, and if arrears of maintenance would be granted in a civil suit, at least for a period of three years, I think that the same principle could be adopted here also while exercising the discretion."

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

7. From the material on record it is seen that there is no contra evidence produced by the respondent / wife that the petitioner is still working in IBM and is earning considerable amount as income and that he has not lost the job in IBM and is working in small company. In the circumstance, the judgment relied on by the learned counsel for the respondent is not advancing the case of the respondent as the petitioner has pleaded that he will be put to great hardship, if he is directed to pay any maintenance from the date of IDOP.

8. The petitioner has not substantiated his claim that the respondent is earning Rs.10,000/- per month by taking tuition and the parents of the respondent are having sufficient means. In the matrimonial cases, husband has to pay maintenance to the wife and his child. In para 22 of the judgment this Court reported in **1999 (1) MLJ 734 (Selvamurthy Vs. Thirupura Sundari and another)** this court has extracted the judgment of the Hon'ble Apex Court in **Jasbir Kaur Sehgal reported in 1997(7) SCC 7**, wherein the Hon'ble Apex Court has held that court has discretion to fix the date from which maintenance can be ordered. The court has discretionary power to fix the date from which the wife is entitled to claim maintenance.

9. Considering the facts and circumstances, this Court in <https://hcservices.ecourts.gov.in/hcservices/> inclined to modify the order of the learned Judge fixing maintenance from the date of IDOP. The petitioner is directed to



pay maintenance from the date of application filed by the respondent / wife i.e., from 02.11.2015 instead of date filing of IDOP.

10. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Kanyakumari Division at Nagercoil.

+ 1 CC TO M/S.A.ELIS CHITRA DEVI, ADVOCATE IN SR NO. 21721/16
+ 1 CC TO M/S.M.P.SENTHIL, ADVOCATE IN SR NO. 22151/2016

NBJ

TE/SK/ : 01/06/2016 : 4P/4C

C.M.A. (MD) No.119 of 2016

and

C.M.P. (MD) No.2000 of 2016

20.04.2016