



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. (MD) No.990 of 2016
and
C.M.P. (MD) .No.8878 of 2016

AL.Kannan ... Appellant/Respondent/Petitioner

Vs

Panjavarnam ... Respondent/Petitioner/Respondent

The Civil Miscellaneous Appeals filed under Section 19 (1) of the Family Court Act against the fair and decreetal order dated 13.04.2016 made in I.A.No.62 of 2014 in H.M.O.P.No.6 of 2014 on the file of the Family Court, Sivagangai.

For Appellant :Ms.K.R.Shivashankari

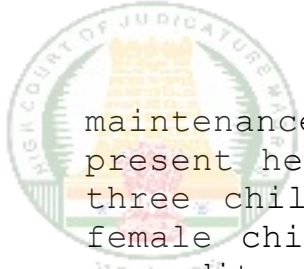
JUDGMENT

[Judgment of the Court was delivered by

M. SATHYANARAYANAN, J.]

The husband of the respondent, aggrieved by the interim award of Rs.2,500/- towards maintenance and Rs.5,000/- towards litigation expenditure, by the Family Court, Sivagangai, Sivagangai District, has filed this Civil Miscellaneous Appeal.

2. A perusal of the entire materials would disclose among other things that the marriage of the appellant was solemnized on 10.09.1992 and out of wedlock, three children and one female child were born to them. The appellant would submit that in connection with his occupation, he went to Mumbai and leave the respondent and the children at Alagapuri. Taking advantage of his absence, the respondent developed illicit intimacy with very many persons. As a result, the appellant was constrained to file H.M.O.P for divorce and pending disposal of the respondent herein claimed interim maintenance and litigation expenditure before the Court below. In the light of the fact, the appellant contended that she is not entitled for



maintenance. It is further contended by the appellant that at present he is eking out his livelihood at Mumbai and maintaining three children, whereas, the respondent is maintaining only the female child and the award of interim maintenance and litigation expenditure is uncalled for and prays for interference. Learned Counsel for the appellant further contended that in view of the conduct of the respondent and the appellant is as on today eking out his livelihood as Coolie and maintaining three children, it is extremely difficult for him to comply with the order of the Court below.

3. This Court has considered the submissions made by the learned Counsel for the appellant and gone through the impugned order.

4. The primordial argument advanced by the learned Counsel for the appellant is that since the respondent developed an illegal intimacy with very many persons, she is not entitled for an interim relief, as ordered by the Court below. However, we are of the view that the said issue is to be adjudicated before the Court below with the full-fledged enquiry and therefore, it cannot be considered at this stage. Insofar as the plea made by the appellant that he is eking out his livelihood and maintaining three children and thereby, he is unable to pay the interim award amount to the respondent, as ordered by the Court below, this Court is of the prima facie view that the parentage of the female child is not disputed by the appellant and therefore, the trial Court thought it fit to award a sum of Rs.2,500/- towards maintenance and and Rs.5,000/- towards litigation expenses. In the light of escalation of prices day-by-day, that too, the respondent is maintaining the female child, the amount awarded by the Court below cannot be termed as exorbitant, as alleged by the appellant. The appellant has also a moral duty to maintain her daughter. Therefore, this Civil Miscellaneous Appeal is dismissed in limine. Since the time granted by the Court below is already over by June, 2016 itself, the appellant is directed to comply with the order of the Court of the below, within a period of two weeks from the date of receipt of a copy of this order. However, it is made clear that the findings and observations made hereunder is only for the disposal of this Civil Miscellaneous Appeal and the Court below need not influence any of the observations made hereunder and adjudicate the matter purely on quality of evidence. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Record)

/True copy/



To:

1 The Judge,
Family Court,
Sivagangai District

2 Panjavarnam
W/o.Kannan,
D/o.Muthiah Ambalam,
Thevarambur Village,
Kattambur Post,
Thiruppathur Taluk,
Sivagangai District.

+1cc to M/s.S.Srinivasa Raghavan, Advocate SR.No.53696/16

Ssm

sm:PV :24/10/2016:3P/4C

C.M.A. (MD) No.990 of 2016
19.09.2016