

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.11.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1070 of 2017
and
CMP.No.5328 of 2017

S.Pandian

... Appellant

vs.

1.Swapna Rajasekaran
2.Vaishnavi (minor)
rep.by her natural guardian
Mother Swapna Rajasekaran

... Respondents

Civil Miscellaneous Appeal filed under section 19(1) of Family Courts Act, 1984 praying to set aside the order dated 09.09.2016 passed by the Principal Judge, Family Court, Chennai in I.A.No.1661 of 2015 in O.P.No.3711 of 2014.

For Appellant : Mr.J.Saravana Vel

For Respondents : Mr.R.Jayaprakash

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Civil Miscellaneous Appeal has been directed against the order dated 09.09.2016 passed in I.A.No.1661 of 2015 in O.P.No.3711 of 2014, by the Family Court, Chennai.

2.The appellant herein, as petitioner, has filed O.P.No.3711 of 2014, on the file of the trial Court, praying to pass a decree of divorce, wherein, the first respondent herein has been arrayed as respondent.

3.During pendency of the same, the first respondent herein, for herself and on behalf of her minor daughter, has filed I.A.No.1661 of 2015 under Section 24 of the Hindu Marriage Act,

1955, praying to pass interim monthly maintenance as set out therein.

4.The trial Court, after considering the contentions put forth on either side, has directed the respondent therein to pay interim monthly maintenance of Rs.15,000/- to the first petitioner(wife) and another sum of Rs.10,000/- to the second petitioner (minor daughter) by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant/respondent has contended to the effect that as per Section 24 of the Hindu Marriage Act, 1955, there is no provision for granting interim monthly maintenance to children; inspite of lack of provision, the trial Court has awarded a sum of Rs.10,000/- to the second petitioner(minor daughter). Under the said circumstances, the quantum of interim monthly maintenance awarded by the trial Court is liable to be modified. Further, the first petitioner (wife) is having sufficient means to maintain herself.

6.Per contra, the learned counsel appearing for the respondents/petitioners has also contended to the effect that the appellant/respondent has been working in a Foreign country and further, the second respondent/second petitioner is under the care and custody of the first respondent/first petitioner. Considering the factual situation of the present case, the trial Court has rightly passed the impugned order and therefore, the same does not require any interference.

7.It is true that in Section 24 of the Hindu Marriage Act, 1955, there is no specific provision for granting interim monthly maintenance to children.

8.In the instant case it is an admitted fact that the second respondent/second petitioner (minor daughter) is under the care and custody of the first respondent/first petitioner.

9.Considering the fact that in the form of interim monthly maintenance, as per Section 24 of the said Act, no order can be passed in favour of the second respondent/second petitioner (minor child) and also considering that there is no specific evidence for coming to a conclusion that the first respondent/first petitioner(wife) is having sufficient means to maintain herself, this Court is inclined to modify the order passed by the trial Court as stated infra.

In fine, this Civil Miscellaneous Appeal is allowed in part without costs. The interim monthly maintenance awarded to the second respondent/second petitioner (minor daughter) to the tune

of Rs.10,000/- is set aside and the interim monthly maintenance awarded to the first respondent/first petitioner(wife) is raised to the tune of Rs.20,000/-(Rupees Twenty Thousand). In other aspects, there is no modification. The trial Court is directed to dispose of O.P.No.3711 of 2014 before the end of January 2018 and report the same to the Registry without fail. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk

To

The Principal Judge,
Family Court, Chennai

Copy To

The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.J.Saravana Vel, Advocate, S.R.No.82517

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.82936

C.M.A.No.1070 of 2017

NM(CO)
CS/15/12/17

सत्यमेव जयते

WEB COPY