

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 1168 of 2017

R.V. Gayathri Devi .. Appellant

Versus

S. Girish .. Respondent

Appeal filed under Section 19 of The Family Courts Act, 1988 against the Fair and Decreetal Order dated 08.10.2015 passed in I.A. No. 297 of 2015 in H.M.O.P. No. 1164 of 2013 on the file of Additional Principal Family Judge, Coimbatore.

For Appellant : Mr. R. Marudhachalamurthy

For Respondent : Mr. K. Govi Ganesan

JUDGMENT

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

Not satisfied with the quantum of interim maintenance awarded by the learned Additional Principal Family Judge, Coimbatore in the Order dated 08.10.2015 passed in I.A. No. 297 of 2015 in H.M.O.P. No. 1164 of 2013, the wife has come forward with this appeal.

2. The marriage between the appellant and the respondent was solemnised on 02.06.2010 at Venkatalakshmi Kalyana Mandapam, Trichy Road, Coimbatore, as per Hindu rites and customs. Due to the wedlock, a female child was born on 14.09.2011 and she was named as Sashrutha. Due to misunderstanding between the appellant and the respondent, the appellant has filed HMOP No. 1164 of 2013 against the respondent on the ground of cruelty and desertion. During the pendency of HMOP No. 1164 of 2013, the appellant has filed I.A. No. 297 of 2015 under Section 24 of The Hindu Marriage Act seeking a direction to the respondent to pay a sum of RS.30,000/- per month towards interim maintenance to maintain herself and the minor female child. It is contended by the appellant that the respondent is working in a software company

at Bangalore and earning a sum of Rs.1,00,000/- per month. On the contrary, the appellant is not employed and she is wholly dependent on her parents for her own maintenance as well as the female minor child. In such circumstances, she prayed for issuing a direction to the respondent to pay a sum of Rs.30,000/- per month as interim maintenance.

3. The application was resisted by the respondent by contending that it is incorrect to state that he is earning a sum of Rs.1,00,000/- per month. On the contrary, the respondent is only receiving a sum of Rs.79,000/- per month out of which he has to maintain himself and his aged parents. It is also stated that from and out of his salary, he has to pay the house rent and also meet the medical expenses of his parents. Further, the father of the respondent is a cardiac patient and suffering from diabetes. Similarly, his mother is also suffering from arthritis problem and other age related ailments. It is also stated by the respondent that he reliably came to know that the appellant is employed and getting a salary of Rs.25,000/- per month. Therefore, according to the respondent, the salary he receives is just sufficient to maintain himself and to meet the medical expenses for his aged parents. Therefore, the respondent prayed for dismissal of the I.A. No. 297 of 2015 filed by the appellant.

4. Before the Family Court, on the side of the appellant, neither any witness was examined nor any document marked. On the side of the respondent, even though no witness was examined, Exs. R1 to R14 were marked to disprove the contentions of the appellant. The Family Court, Coimbatore, after analysing the documentary evidence, has directed the respondent to pay a sum of Rs.12,000/- per month as maintenance to the appellant. Aggrieved by the same, the wife/ appellant has come up with this appeal.

5. The learned counsel for the appellant submitted that the respondent is employed in a software company at Bangalore and earning a sum of Rs.1,00,000/- per month. In fact, before the Family Court, the salary slip of the respondent for the month of February and March 2015 were marked as per which the gross salary of the respondent is Rs.1,02,577/- and after deduction he is receiving a sum of Rs.79,159/- during February 2015. Thus, according to the counsel for the appellant, the respondent is earning more than Rs.1,00,000/- as monthly salary, while so, the Family Court ought to have directed him to pay a sum of Rs.30,000/- per month as prayed for.

6. Per contra, the learned counsel for the respondent would contend that before the Family Court, the respondent filed Exs. R1 and R2, salary slips which would indicate that the respondent is receiving a sum of Rs.1,02,577/- as gross salary and after all deductions, he is receiving a sum of Rs.79,159/- as take home salary. Out of this amount, the

respondent is paying a sum of Rs.8,000/- as rent, which could be evident from Ex.R3, rental agreement. Further, the respondent is also paying instalments for the housing loan availed by him for construction of a house which comes to Rs.37,756/- and Rs.44,388/- as per Exs. R7 and R10. After all these payments, the respondent is having only a meager salary and it is just sufficient to maintain himself and his aged parents. The Family Court, taking note of the resourcefulness of the husband/respondent, has rightly directed the respondent to pay a sum of Rs.12,000/- to the wife/appellant and it calls for no interference by this Court.

7. We have heard the counsel for both sides and perused the materials placed on record. Irrespective of the above rival contentions, we find that the respondent has to maintain herself and the minor female daughter, who is now aged 6 years. Furthermore, even though it was contended by the respondent that the appellant is employed in a company and earning a sum of Rs.25,000/- per month, he has not produced any documentary evidence to that effect before the Family Court.

8. As regards the income of the respondent, the respondent himself produced Ex.R1, pay slip for the month of February 2015 wherein his gross salary was shown as Rs.1,02,577/- and his net salary as Rs.79,159/-. Ex.R2 is the pay slip for the month of March 2015 wherein his net salary is indicated as Rs.78,285/-. Thus, it is clear that the respondent is earning a sum of more than Rs.1,00,000/- as gross salary. At the same time, the respondent would contend that from and out of his salary, he is maintaining himself, paying housing loan and also incurring medical expenses for his aged mother. Therefore, if the sum of Rs.30,000/- as prayed for by the appellant is awarded, he will be put to irreparable loss and hardship and his survival itself will be in jeopardy.

9. Having regard to the above rival contentions and taking note of the fact that the appellant has to maintain herself and the minor daughter, aged 6 years now, we feel that in the interest of justice the respondent shall be directed to pay a sum of Rs.15,000/- per month as against the sum of Rs.12,000/- per month ordered by the Family Court.

10. In the result, the Civil Miscellaneous Appeal is allowed by modifying the Fair and Decretal Order dated 08.10.2015 passed in I.A. No. 297 of 2015 in H.M.O.P. No. 1164 of 2013 on the file of Additional Principal Family Judge, Coimbatore by directing the respondent to pay a sum of Rs.15,000/- per month towards interim maintenance to the appellant and the minor daughter. No costs. The respondent is directed to deposit the arrears of interim maintenance to the credit of H.M.O.P. No. 1164 of 2013 on the file of Additional Principal Family Judge, Coimbatore within a period of eight

weeks from the date of receipt of a copy of this Judgment. Having regard to the fact that HMOP No. 1164 of 2013 is pending for the past four years, we direct the Additional Principal Family Judge, Coimbatore to take up HMOP No. 1164 of 2013 and to dispose it of within a period of four months from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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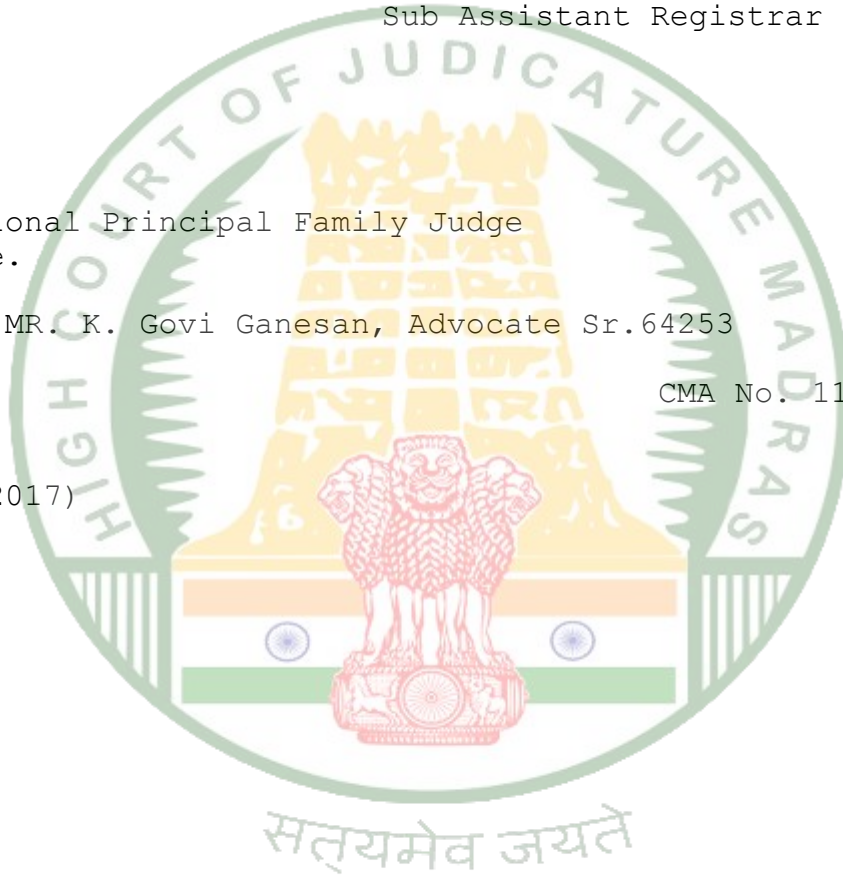
To

The Additional Principal Family Judge
Coimbatore.

+ 1 cc to MR. K. Govi Ganesan, Advocate Sr.64253

CMA No. 1168 of 2017

SVI (CO)
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