

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 1180 of 2017
and
C.M.P. No. 5895 of 2017

T. Velumuni @ Velumani ... Appellant

Versus

1. D. Jayanthi
2. Mani Mala (Minor)
3. Mani Maran (Minor)
Minors represented by the
mother and natural guardian
the first respondent ... Respondents

Appeal filed under Section 19 of the Family Courts Act against the Fair and Decretal Order dated 02.01.2017 passed in I.A. No. 437 of 2015 in O.P. No. 1053 of 2014 on the file of I Additional Family Court, Chennai

For Appellant : Mr. S. Vasu
For Respondents : Mr. E. Kannadasan

JUDGMENT

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

This appeal is filed by the husband/appellant as against the order dated 02.01.2017 passed in I.A. No. 437 of 2015 in H.M.O.P. No. 1053 of 2014 on the file of I Additional Family Court, Chennai. By the said order, the Family Court, Chennai directed the appellant to pay a sum of Rs.4,000/- per month to the wife/first

respondent and Rs.2,000/- each to the minor respondents 2 and 3, totalling a sum of Rs.8,000/- per month as interim maintenance.

2. The marriage between the appellant and the first respondent was solemnised on 25.06.2007 at A.G. Sabai, Little Mount, Saidapet, Chennai according to Christian rites and customs. Due to the wedlock between the appellant and the first respondent, the minor respondents 2 and 3 were born on 27.06.2008 and 10.10.2009 respectively.

3. According to the appellant, after the marriage, the appellant and the first respondent resided in the appellant's house for six months and thereafter, they have taken a separate house for rent at Lloyds Road, Triplicane, Chennai. According to the appellant, initially, the matrimonial life was blissful and happy, but gradually, the respondent has started behaving very rudely with the appellant and her behaviour pattern has completely changed. It is the case of the appellant that he went to Kerala towards his employment on 09.11.2009 and one month thereafter, the appellant had taken the first respondent as well as the two minor children along with him to Kerala. During their stay at Kerala, the first respondent picked up quarrel with the appellant for even trivial reasons and refused to discharge her duties as expected. On 01.05.2010, the appellant, first respondent and the two minor children returned to Chennai where the first respondent and the minor children were accommodated in a rented house at No.199, Surya Narayana Chetty Street, Royapuram and thereafter, the appellant went to Kerala again to continue his employment. According to the appellant, he was earning a sum of Rs.12,000/- per month at that time and spent all the amount earned by him towards the respondents and their needs. While so, on 16.10.2012, the appellant got his

employment transferred from Kerala to Chennai and on reaching Chennai, he saw the first respondent and entire family consisting of her brothers staying in the rented premises and he also came to know that they were frequent visitors to the house. In this context, the appellant requested the first respondent not to permit her brothers to stay there as he finds it very hard to maintain his family consisting of himself and the respondents but the first respondent refused to heed to it and picked up quarrel with him. It is the further case of the appellant that on 01.11.2012, the first respondent joined as Lab Technician in a private company and she is earning a sum of Rs.9,000/- per month. After getting employed, the first respondent used to tease the appellant in the presence of her brothers and other family members and there were occasion where the first respondent had beaten the appellant. As there were frequent quarrel in the matrimonial life at the instance of the first respondent, on 27.08.2013, the first respondent along with the two minor children deserted the appellant. While so, on 02.01.2014, the first respondent along with her brothers came to the house of the appellant's mother and threatened the appellant and his mother with dire consequences. Notwithstanding the same, the first respondent has given a false complaint against the appellant on 02.01.2014 before the All Women Police Station, Royapuram as if the appellant attempted to kill her. On enquiry, the Police officials have closed the complaint as it is civil in nature and advised the parties to approach the Family Court for necessary relief. Thereafter, the appellant has filed H.M.O.P. No. 1053 of 2014 before the Family Court under Section 10 (x) of The Indian Divorce Act for dissolution of the marriage solemnised between him and the first respondent on 25.06.2007.

No. 1053 of 2014 resisting the claim of the appellant for dissolution of the marriage. That apart, the first respondent has also filed O.P. No. 1053 of 2015 under Section 32 of The Indian Christian Marriage Act, 1869 for restitution of conjugal rights by contending that the mother of the appellant was the reason for the quarrel between the appellant and the first respondent. It is further contended that the difference of opinion between the appellant and the first respondent is not a serious one warranting dissolution of the marriage. Atleast for the sake of the minor children, it is just and necessary that the appellant and the first respondent have to unite together and therefore she prayed for issuing appropriate direction to the appellant to live with the respondents.

5. Pending HMOP No. 1053 of 2014 filed by the appellant seeking dissolution of the marriage, the first respondent has filed I.A. No. 437 of 2015 in HMOP No. 1053 of 2014 under Section 24 of The Hindu Marriage Act praying to direct the appellant to pay a sum of Rs.10,000/- per month to the first respondent/wife and Rs.5,000/- each to the minor respondents 2 and 3 towards interim maintenance. According to the first respondent, on 05.08.2013, she left the matrimonial home and from then on, she is maintaining herself and the two children with the income she is earning at the rate of Rs.9,000/- per month as Lab Technician. According to the first respondent, she finds it difficult to maintain herself, particularly, to pay the school fees of the two school going children. On the other hand, the appellant is earning more than Rs.30,000/- per month through his employment in R.S. Graphics, Maduravedu, Velappancherry, Chennai – 600 077 and therefore, she prayed to direct the appellant to pay the maintenance amount.

6. The application for maintenance filed by the first respondent was resisted by the appellant by contending that he is only working as a Lathe Man and earning a sum of Rs.15,000/- per month inclusive of daily batta and over time allowance. According to the appellant, with the amount he receives as salary, he finds it difficult to maintain himself and his aged parents as also to look after the medical expenses of his parents. On the other hand, the first respondent is earning a sum of Rs.15,000/- per month and she is capable of maintaining herself and the two children. Therefore, the appellant prayed for dismissal of the petition for maintenance.

7. Before the Family Court, neither the appellant examined any witness on his side nor marked any document. Similarly, the first respondent also did not examine any witness or marked any document. The Family Court, taking into account the rival submission and the affidavit and counter affidavit filed by the first respondent and the appellant respectively, concluded that even though the first respondent claimed that the appellant is earning Rs.30,000/- per month through his employment with R.S. Graphics, Velappancherry, Chennai and the appellant claimed that the first respondent is earning Rs.15,000/- as Lab Technician, both of them did not produce any document to substantiate their respective claim. However, the appellant being the husband of the first respondent and father of the minor respondents 2 and 3 has a duty to maintain them. Therefore, the Family Court directed the appellant to pay a sum of Rs.8,000/- per month towards interim maintenance to the respondents.

8. The learned counsel appearing for the appellant would contend that

the first respondent is earning a sum of Rs.15,000/- per month and she is capable of maintaining herself and the two minor children. It is further contended that the appellant is earning only Rs.15,000/- per month out of which he is maintaining himself and his aged parents. While so, the Family Court ought not to have directed him to pay a sum of Rs.8,000/- per month as maintenance and prayed for allowing this appeal.

9. The learned counsel for the first respondent submits that with the meager income of Rs.9,000/- per month, the first respondent finds it very difficult to maintain herself and the two minor children, especially to pay the school fees to the minor respondents 2 and 3. In such circumstance, the Family Court is wholly justified in directing the appellant to pay a sum of Rs.8,000/- per month towards maintenance and it does not call for any interference by this Court.

10. We have heard the learned counsel for both sides and perused the materials placed on record. Admittedly, to prove the income of the appellant or the first respondent, no documentary evidence was produced before the Family Court. On the other hand, the appellant himself has admitted in the counter statement filed before the Court below that he is earning Rs.15,000/- per month. On the contrary, according to the first respondent, the appellant is earning more than Rs.30,000/- per month as salary. The fact remains that the first respondent has to maintain herself and the two minor children. According to the first respondent, she finds it very difficult to pay the school fees of the minor children and also to take care of their basic needs. Having regard to the above factual aspects, we feel that the obligation of the appellant to maintain the wife/first respondent and also the minor

respondents 2 and 3 is not only legal but also moral. Further, having regard to the prevailing cost of living and the educational and other expenses, we feel that the Family Court is justified in awarding a sum of Rs.8,000/- per month towards maintenance to the respondents and we find no infirmity in the same.

11. Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the Order dated 02.01.2017 passed in I.A. No. 437 of 2015 in O.P. No. 1053 of 2014 on the file of I Additional Family Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed. Having regard to the facts and circumstances of the case, we direct the I Additional Family Court, Chennai to take up HMOP No. 1053 of 2014 filed by the appellant for dissolution of the marriage and OP No. 1053 of 2015 filed by the first respondent for restitution of conjugal rights and to dispose it of within a period of four months from the date of receipt of a copy of this judgment.

(R.P.S.J.,) (P.V.J.,)

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Index : Yes / No

To

I Additional Family Judge
Family Court
Chennai

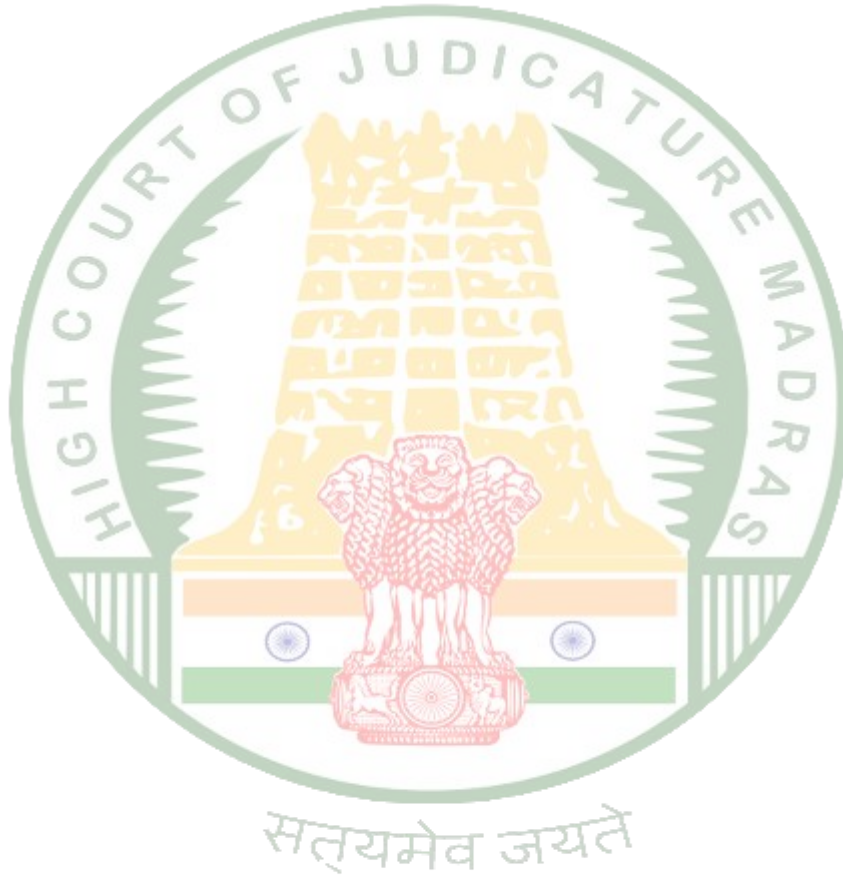
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