

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2017

Coram :-

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.M.A.No.1244 of 2017
and
C.M.P.No.6290 of 2017

M.Sundararaj ... Appellant/Respondent

vs.

S.Radhika ... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, against the order dated 25.02.2016 passed by the learned Additional Principal Judge, Family Court, Coimbatore in I.A.No.315 of 2015 in O.P.No.481 of 2011.

For Appellant : Mr.v.Nicholas

For Respondent : Mr.S.Gunalan

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH.J,)

Challenging the present appeal, is against an interim order directing the appellant/husband to pay a sum of Rs.4000/- to the respondent towards an interim maintenance under Section 24 of the Hindu Marriage Act.

2. The brief facts of the case are as follows:

a) The appellant had married the respondent herein on 17.03.2011. Subsequently, owing to certain misunderstandings between the parties, the appellant herein had filed a petition under Section 12 of the Hindu Marriage Act in O.P.No.481 of 2011 on the file of the learned Additional Principal Judge, Coimbatore to pass a decree of nullity by annulling of the marriage on the ground that the marriage was voidable.

b) The respondent/wife contested the said petition by

denying the averments made by the appellant. The said proceedings are now pending on the file of the learned Additional Principal Judge, Coimbatore in O.P.No.481 of 2011.

c) In the aforesaid proceedings, the respondent had filed an interim application in I.A.No.315 of 2015 (old I.A.No.1816 of 2012) seeking for an interim maintenance under Section 24 of the Hindu Marriage Act, for a sum of Rs.10,000/- per month. According to the respondent/wife, the appellant herein is earning a sum of Rs.20,000/- towards his share from the agricultural income from 10 acres of land belonging to his family. The appellant/husband had filed a counter denying his income and stated that he is depending on his brothers and sisters for his livelihood. The Court below after consideration of the arguments on both the sides had directed the appellant/husband to pay a sum of Rs.4000/- per month to the respondent herein towards interim maintenance from the date of the petition.

d) Aggrieved against the same, the present appeal has been filed.

3. Heard Mr.V.Nicholas, learned counsel for the appellant and Mr.S.Gunalan, learned counsel for the respondent.

4. The point for consideration in the present appeal is as to whether the order of the Court below in granting interim maintenance is sustainable or not.

5. The learned counsel for the appellant submitted that the main case has been filed by him under Section 12 of the Hindu Marriage Act, seeking for a decree of nullity of the marriage and therefore, he is not liable to pay any maintenance for his wife. The respondent herein has not produced any document to prove that the appellant is earning a sum of Rs.20,000/- through agricultural activities and hence in the absence of any proof of his income, the Court below ought to have accepted his plea that he had no income and thereby rejected her claim for maintenance.

6. The learned counsel for the respondent on the other hand submitted that since the marriage between the appellant and the respondent was valid, the appellant herein is bound to pay the maintenance, particularly, when the respondent herein does not have any income to maintain herself. The learned counsel further reiterated that her husband was earning Rs.20,000/- per month as agricultural income.

7. We have given careful consideration to the submissions made by both the counsels and perused the materials on records.

8. It is not in dispute that the respondent herein is the wife of the appellant. Under section 24 of the Hindu Marriage Act, the relevant consideration for maintenance, pendente lite is that the spouse should not have sufficient income for her/his support and once the Court reaches its conclusion in this regard, it has to grant maintenance and the only discretion left with the Court is with regard to the quantum of maintenance.

9. In the present case in hand, the marital status between the appellant and the respondent is in dispute. Until and unless the Court decide that the marriage is void, there shall be a presumption that the marriage between them is valid for the purpose of deciding a petition under Section 24 of the Hindu Marriage Act and the appellant is bound to maintain the respondent pending disposal of the main original petition.

10. With regard to the quantum of maintenance granted by the Court below, in our considered view, a sum of Rs.4000/- cannot be said to be exorbitant. No doubt, the respondent herein has not produced any document to show that the appellant herein was earning a sum of Rs.20,000/- per month. At the same time, we take into consideration the fact that the appellant has not denied the fact that he was doing agricultural operations. But on the other hand has stated that he is dependant on his brothers and sisters for his livelihood. When the husband is able to take care of his own basic needs like food, clothing and shelter, the expenses incurred by him for those basic needs should be treated as his income and accordingly the quantum of maintenance has to be determined. The Hon'ble Supreme Court of India in a case in Amarjit Kaur Vs. Harbhajan Singh [2003 (10) SCC 228] has held that once it is found that the spouse who seeks maintenance did not have any independent income for her support, the Court has to grant maintenance pendente lite. The appellant is therefore, bound to maintain the respondent herein and in our considered view, a sum of Rs.4,000/- cannot be an unreasonable amount for maintenance. Hence, we do not find any valid ground to interfere with the order passed by the Court below in granting interim maintenance.

11. In the result, the Civil Miscellaneous Appeal stands dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

12. However, the original petition is of the year 2011 and therefore, in our view, it would be appropriate to direct the Court below to expedite the main case in the interest of the

parties. Hence, there shall be a direction to the learned Additional Principal Judge, Family Court, Coimbatore to dispose of the main petition in O.P.No.481 of 2011 within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

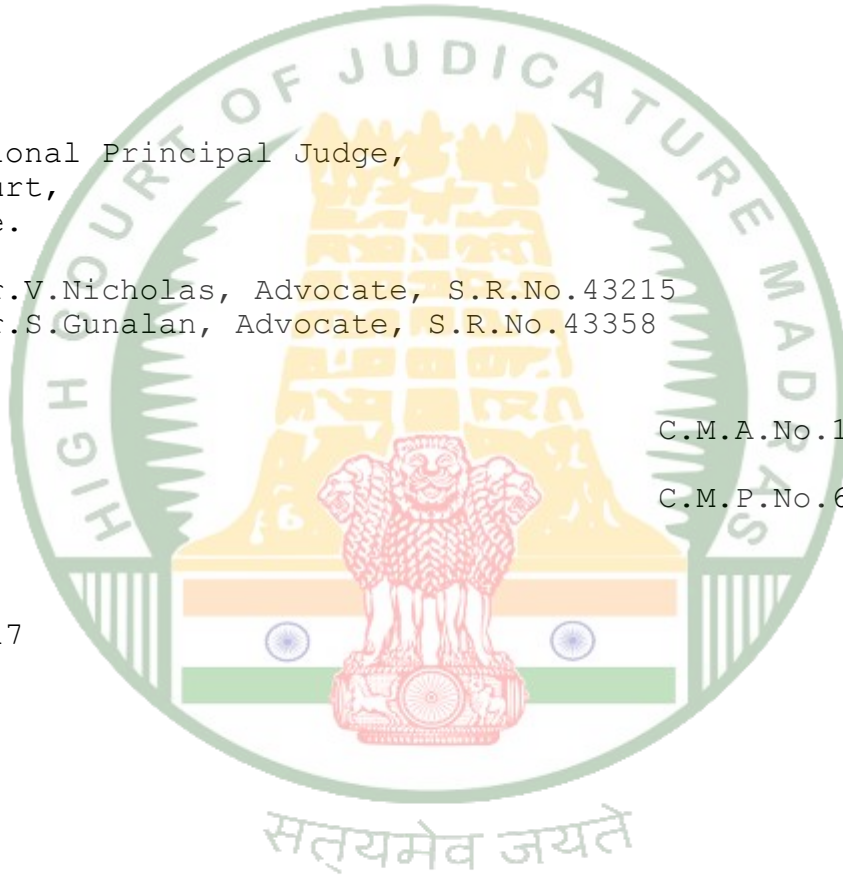
To

The Additional Principal Judge,
Family Court,
Coimbatore.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.43215
+1cc to Mr.S.Gunalan, Advocate, S.R.No.43358

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SCD (CO)
CS/29/08/17



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