

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 1352 of 2017

and

C.M.P. No. 7138 of 2017

S. Padmanabhan .. Appellant /Petitioner

Versus

1. S. Gomathy

2. P.G. Srimathy

Minor represented by the
first respondent

.. Respondents /Respondent

Appeal filed under Section 19 of the Family Courts Act against the Order and Decree dated 10.03.2017 made in I.A. No. 994 of 2016 in O.P. No. 701 of 2015 on the file of II Additional Principal Judge, II Additional Family Court, Chennai.

For Appellant : Mrs. T. Gnana Banu

For Respondents : Mr. P. Sankara Narayanan

JUDGMENT

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

The husband/appellant has come forward with this appeal aggrieved by the order dated 10.03.2017 passed in I.A. No. 994 of 2016 in O.P. No. 701 of 2015 on the file of II Additional Family Court, Chennai. By the said order dated 10.03.2017, the II Additional Family Court, Chennai partly allowed the application filed by the respondents herein and directed the appellant to pay a sum of Rs.3,500/- per month to the minor child towards her educational expenses and Rs.8,000/- towards the maintenance of the respondents herein, totalling a sum of Rs.11,500/- per month.

2. The marriage between the appellant and the first respondent was solemnised on 17.04.2011 at A.S.P. Marriage Hall, Kumbakonam, Kancheepuram District as per Hindu rites and customs. Due to the wedlock between the appellant and the first respondent, the second respondent was born on 01.06.2012.

Due to serious matrimonial dispute, the appellant filed O.P. No. 701 of 2015 before the Sub Court, Kancheepuram under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolving the marriage solemnised between him and the first respondent on 17.04.2011 on the ground of cruelty. On notice, the first respondent, on her own behalf and on behalf of the minor second respondent, has filed I.A. No. 994 of 2016 under Section 24 of The Hindu Marriage Act, praying to direct the appellant to pay a sum of Rs.25,000/- as interim maintenance to the respondents, besides a sum of Rs.15,000/- towards litigation expenses.

3. The application for interim maintenance was resisted by the appellant by filing a counter affidavit. According to the appellant, he is working as a Clerk in the Village Panchayat Union Office, Thirumudivakkam and earning a sum of Rs.9,245/- per month and he has to maintain himself and his aged parents. On the other hand, the first respondent is working as a Teacher in a Private School and earning salary, and therefore, the first respondent is having the wherewithal to maintain herself. Therefore, the appellant prayed for dismissal of the application for interim maintenance.

4. Before the Family Court, in I.A. No. 994 of 2016, no witness was examined, however, the appellant herein marked Ex.R1, Pay Certificate and on behalf of the respondents, Exs. P1 to P5 were marked. The Family Court, upon considering the fact that the appellant is earning Rs.10,703/- as could be seen from Ex.R1, pay certificate, directed him to pay a sum of Rs.3,500/- per month towards educational expenses of the minor second respondent besides Rs.8,000/- per month towards monthly maintenance to the respondents.

5. The learned counsel for the appellant would vehemently contend that even though the Family Court concluded that the appellant is earning only Rs.10,703/- per month, it has directed the appellant to pay a total sum of Rs.11,500/- per month to the respondents towards interim maintenance, which is over and above the salary received by him. Thus, according to the counsel for the appellant, the Family Court, without proper appreciation of the evidence made available has directed the appellant to pay Rs.11,500/- per month and it warrants interference by this Court.

6. On the above contention, this Court heard the learned counsel for the respondents, who would only justify the order passed by the Family Court on the ground that the prevailing cost of living requires atleast a sum of Rs.11,000/- per month to enable the first respondent to maintain herself and the minor second respondent and also to meet the educational expenses of the minor female child.

7. We have heard the counsel for both sides and perused the materials placed on record. It is not in dispute that the

appellant is earning a sum of Rs.10,703/- per month through his employment as a Clerk in a Panchayat Union. The monthly salary received by the appellant is also reflected under Ex.R1, Pay Certificate of the appellant. When such being the case, the Family Court erred in directing the appellant to pay a total sum of Rs.11,500/- per month when he himself is in receipt of a salary of Rs.10,703/- per month and such maintenance amount awarded exceeds the income of the appellant. While granting maintenance, the Court has to take into account the wherewithal of the husband to pay the maintenance amount. In other words, the quantum of maintenance awarded largely depends on the financial capacity of the husband to pay. The Court also has to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to when she lived with her husband. In such circumstances, we are of the view that the order passed by the Court below awarding Rs.3,500/- towards educational expenses of the second respondent and Rs.8,000/- towards maintenance of the respondents cannot be legally sustained. At the same time, taking into account the fact that the first respondent has to maintain herself and the minor second respondent, we feel that directing the appellant to pay a sum of Rs.8,000/- per month towards monthly maintenance would meet the ends of justice.

8. In the result, the Order and Decree dated 10.03.2017 made in I.A. No. 994 of 2016 in O.P. No. 701 of 2016 on the file of II Additional Family Court, Chennai is set aside. The Civil Miscellaneous Appeal is partly allowed directing the appellant to pay a sum of Rs.8,000/- per month towards interim maintenance to the respondents. No costs. Consequently, connected miscellaneous petition is closed.

SD/-

ASSISTANT REGISTRAR

TRUE COPY

SUB ASSISTANT REGISTRAR

rsh
To
II Additional Principal Judge,
II Additional Family Court, Chennai

CMA No. 1352 of 2017

sdr 17/11/2017