

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2017
Pronounced on : 20.07.2017

Coram :-

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

C.M.A.No.1504 of 2017
and
CMP.No.8022 of 2017

1.Dr.Jothilakshmi @ C.V.Akshayaa
2.Minor A.P.Swetha
3.Minor A.P.Nikitha
Appellants 2 and 3 are rep. by their
mother/first appellant herein ... Appellants
vs.
R.Prabhakar ... Respondent

Prayer:Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, against the impugned order dated 08.11.2016 passed by the learned Principal Judge, Family Court, Chennai in I.A.No.1074 of 2011 in O.P.No.137 of 2011.

For Appellant :Mr.C.Shyaamala
For Respondent :Mr.C.A.Thiyagarajan

JUDGMENT

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

Aggrieved against the order of granting a sum of Rs.15,000/- per month to the appellants 2 & 3/minor children towards interim maintenance, the first appellant had filed the present appeal seeking for enhancements.

2.Heard Mrs.C.Shyaamala, learned counsel for the appellants as well as Mr.C.A.Thiyagarajan, learned counsel for the respondent.

3.Admittedly, the marriage between the first appellant and the respondent took place on 05.09.2003. The first appellant

herein is a practising doctor and the respondent, who is the first appellant's husband and father of the second and third appellants is employed as a Manager in Repco Bank, Tirupati, Andhra Pradesh. Owing to certain misunderstandings between the spouses, the respondent has filed a petition for divorce in O.P.No.137 of 2011 before the Principal Family Court, Chennai. Pending the petition, the first appellant has filed an interlocutory application in I.A.No.1074 of 2011, seeking interim maintenance for the minor children/appellants 2 and 3. Through an order dated 08.11.2016, the learned Judge had directed the respondent herein to pay a sum of Rs.15,000/- to the minor children as interim maintenance. Challenging the same, the present appeal has been filed.

4. According to the learned counsel for the appellants, the respondent is drawing a sum of Rs.40,000/- towards salary and that he is also getting another sum of Rs.40,000/- towards rental income from his own apartment at Anna Nagar, Chennai. The learned counsel also submitted that the respondent has an additional income from his business of Fast Food Restaurant in the name of 'Fusion Soda Hub and Food Lounge' at Villivakkam and 'Fusion Food Lounge' at Anna Nagar. Therefore, she prays for enhancement of the interim maintenance to the minor children/appellants 2 and 3.

5. The learned counsel for the respondent on the other hand submitted that it is true that he was employed in Repco Bank, Tirupathi, Andhra Pradesh but owing to certain disturbances caused by the first appellant herein inside his place of employment, he was constrained to remain absent from the bank and hence, has not been drawing any salary or payment from March 2012 onwards and therefore submitted that the present appeal seeking enhancement of the interim maintenance to the minor children has to be dismissed.

6. We have given careful consideration to the submissions made by the respective counsels and perused the documents in hand.

7. The learned counsels on either side placed reliance on the various documents produced before us and argued on the points giving rise to the cause of action for the divorce petition. The impugned order in the present appeal is one passed by the learned Principal Judge, Family Court, Chennai under Section 24 of the Hindu Marriage Act. The main petition filed by the husband in O.P.137 of 2017 before the learned Principal Judge, Family Court, Chennai seeking divorce on the ground of cruelty is pending. While that being so, it would not be appropriate for us to give a remark or a finding to the allegations made by either of the parties to the divorce petition which requires to

be proved through a proper trial.

8. In these circumstances, the issue to be determined in the present appeal is as to whether the interim maintenance awarded by the learned Judge needs to be enhanced or not. Section 26 of the Hindu Marriage Act empowers the Court to pass interim orders for maintenance of minor children. It is not in dispute that the respondent is working as a Manager in Repco Bank. When the paternity of the appellants 2 and 3 are not disputed by the respondent herein, it is the bounded duty of the respondent to maintain his minor children. The first appellant and the respondent herein are in a decent status and would have lived in a comfortable atmosphere, had they been living together and all the comforts would have been enjoyed by their minor children. Taking into their social status, a sum of Rs.7500/- per month to each of the minor children cannot be said to be exorbitant in the present cost of living. Both the minor children are studying in primary schools, which fact is not denied by the respondent. Apart from the education expenses, the minor children needs to be taken care of their basic necessities including food, clothing and medical expenses.

9. The only objection raised by the respondent herein is that he has no income from his employer. On the other hand, the learned counsel for the appellants submitted that the respondent herein is also involved in a business of Fast Food Restaurant. Some of the documents produced before the Family Court evidences the involvement of the respondent in a business to a Fast Food Restaurant. The documents also shows that the respondent's mobile number has been shown as a contact number which fact has not been denied by the respondent. Further, the learned counsel for the respondent submitted that the business is that of the respondent's brothers and that he has no role in it. While perusing the documents filed in support of the respondent's involvement in the Fast Food Restaurant, it is seen that the respondent's name and contact number has been shown as owner of the Fast Food Restaurant at Villivakkam and Anna Nagar.

10. It is further seen that the respondent is not only involved in Fast Food Restaurant in the joint name of Fusion Soda Hub and Food Lounge at Villivakkam but he was also involved in the Fast Food Restaurant at Anna nagar in the name and style of Fusion Food Lounge. The bank statements produced also shows the periodical credit entries for the period commencing from 01.12.2014 to 31.01.2010. As such, we are unable to believe the statement of the respondent that he has no income of his own.

11. The learned Judge has ordered a sum of Rs.7500/- per month towards monthly maintenance to each of the minor children. In our view, the amount awarded is little meagre while taking into consideration, the status of the children vis-a-vis their

parents' status. The first appellant has not sought for any maintenance for herself. Nevertheless, we have also taken into account the fact that she is an earning member and equally liable to maintain the children also. In view of the same, it would be appropriate that the monthly maintenance for each of the child is safely determined at Rs.10,000/- per month.

12.Since the original petition seeking maintenance was made in the year 2011 and was amended in May 2015, the respondent would be liable to pay the enhancement of maintenance from 31.03.2011 from the date of the original petition.

13.In fine, the present appeal is partly allowed. The respondent is directed to pay a sum of Rs.10,000/- per month for each of the appellants 2 and 3 herein as monthly maintenance from 31.03.2011 till the disposal of the original petition. One time litigation expenses of Rs.10,000/- ordered by the learned Principal Judge, Family Court, Chennai is also confirmed. Consequently, Connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

DP
To
The Principal Judge,
Family Court,
Chennai.

+3 cc to Mr.C.Shyaamala Advocate sr 51573

+1 cc to Mr.C.A.Thiyagarajan Advocate sr 50907

CMA.No.1504 of 2017

and

CMP.No.8022 of 2017

svl(co)
aa02/08/2017

WEB COPY