

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE T.MATHIVANAN

CMA.NO.158/2017 & CMP.No.1035/2017

K.Mariyappan

Appellant

Versus

Shanthi

Respondent

Appeal filed under section 19 of the Family Court Act, 1988, against the order and decretal order dated 17.05.2016 made in IA.No.821/2015 in HMOP No.223/2015 passed by the learned Judge, Family Court, Coimbatore.

For Appellant : Mr.S.Kanmani Annamalai

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The husband, who suffered an order of interim maintenance and litigation expenses, is the appellant herein. The respondent filed HMOP.No.223/2015 on the file of the Family Court, Coimbatore, against the appellant herein, for restitution of conjugal rights and in the said petition, it is averred among other things, the marriage between her and the appellant herein was solemnised on 09.07.1984 at Chinnamanoor, as per the Hindu Rites, Rituals and customs and out of wedlock, two children, viz., Padmapriya and Devi, were born during 1987 and 1989 respectively and also one boy, viz., Padmanaban, in the year 1990 and the second female child is no more now. It is also averred that the appellant under the pretext of doing work in a Lathe shop, has left the respondent and the children at Coimbatore and was earning for their maintenance.

2 It is further averred that the appellant used to spend money to his relatives and also developed intimacy with his relative and when it was questioned, he started torturing the respondent herein and gone to the extent of marrying her also and deserted the respondent herein and therefore, came forward to file a petition for restitution of conjugal rights

and pending disposal of the same, she file IA.No.821/2015 praying for interim maintenance at the rate of Rs.30,0000/- per month and litigation expenses of Rs.10,000/-.

3 The appellant herein also filed a counter in the main petition, denying all the averments and would contend that the respondent herein is guilty of exhibiting cruelty and also started threatening him and though the appellant was accommodating, she does not chose to mend her ways and without any reasonable or justifying cause, started living separately and as such, he is not entitled to pay interim maintenance as well as the litigation expenses and also took a stand that in the light of the attitude of the respondent herein, she is not entitled to interim maintenance and litigation expenses.

4 The Trial Court, after taking note of the averments made in the petition as well as in the counter affidavit, found that the appellant had also contracted the second marriage and he is running a business, in the name and style as "K.M.Traders" and also doing Motor Rewinding business and though he has averred that he has suffered a loss in the business and that he is suffering due to illness and is also maintaining is age old parents, he had failed to file any documentary evidence and also not gone into the witness box. The Trial Court, on a appreciation of materials placed before it, has awarded a sum of Rs.3000/- per month towards interim maintenance, payable from the date of petition and a sum of Rs.4000/- towards litigation expenses, vide the impugned fair and decreetal order dated 17.05.2016 and challenging the legality of the same, the appellant is before this Court by preferring the present appeal.

5 Mr.S.Kanmani Annamalai, learned counsel appearing for the appellant would submit that the marital relationship between the appellant and the respondent herein was dissolved in the form of Deed of Dissolution dated 17.12.1990 and thereafter only, the appellant contracted second marriage and the respondent is also leading her life with somebody else and with a view to harass the appellant and also with an oblique motive, had belatedly filed a petition for restitution of conjugal rights and would further contend that the petitioner is suffering due to Diabetics and Blood Pressure and he has suffered a loss in the business and since his parents are also maintained by him, it will be extremely difficult for him to comply with the impugned order and prays for interference.

6 This Court has carefully considered the submission made by the learned counsel appearing for the appellant and also perused the typed set of documents.

7 It is the primordial submission of the learned counsel appearing for the appellant that in the light of the Deed of Dissolution dated 17.12.1990, the petitioner contracted second marriage and since the marital relationship does not exist, he is not liable to pay the interim maintenance and even otherwise, the amount claimed by the respondent is exorbitant and on account of the loss suffered by him in the business coupled with the illness as well as maintenance of his parents, he cannot pay the same. It is pertinent to point out at this juncture that the appellant did not enter the witness box and not filed any documentary evidence that there was dissolution of marriage with the respondent herein and it was reduced into writing in the form of Deed of Dissolution dated 17.12.1990. The main petition for restitution of conjugal rights is still pending on the file of the Family Court, Coimbatore. Awarding of a sum of Rs.3000/- per month towards interim maintenance and a sum of Rs.4000/- towards litigation expenses by the Trial Court, cannot be said to be exorbitant, considering the inflation rate and the cost of living. In the considered opinion of this Court, the Trial Court has exercised discretion and had awarded the said amounts. This Court, on an independent application of mind, finds no error or infirmity in the reasons assigned in the impugned order, awarding interim maintenance and find no merits in the appeal.

8 Accordingly, the Civil Miscellaneous Appeal is dismissed at the admission stage itself, confirming the fair and decreetal order dated 17.05.2016 made in IA.No.821/2015 in HMOP.No.223/2015 on the file of the Family Court, Coimbatore. No costs. Consequently, the connected miscellaneous petition is also closed.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

AP
To
The Family Court
Coimbatore

+1cc Mr.S.Kanmani Advocate SR.No.6198

Judgment in CMA.No.158/2017

RP (CO)
GN(14/02/2017)