

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.12.2017

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.2069 of 2016
and
CMP.No.15103 of 2016

Sasi Kumar Appellant

vs.

Kalaiaarasi ... Respondent

Civil Miscellaneous Appeal filed praying to set aside the order dated 15.03.2016 passed by the Family Court, Villupuram in I.A.No.542 of 2015 in H.M.O.P.No.109 of 2015.

For Appellant : Ms.M.Parimala Devi for
M/s.Rajeswari Karthikeyan

For Respondent : Mr.D.S.Thirumavalavan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Civil Miscellaneous Appeal has been directed against the order dated 15.03.2016, passed in I.A.No.542 of 2015 in H.M.O.P.No.109 of 2015, by the Family Court, Villupuram.

2.The respondent herein, as petitioner, has filed H.M.O.P.No.109 of 2015, on the file of the trial Court for getting a decree of divorce on the ground of cruelty, wherein, the appellant has been shown as respondent.

3.During pendency of the same, the petitioner in H.M.O.P.No.109 of 2015, as petitioner, has filed I.A.No.542 of 2015, under Section 24 of the Hindu Marriage Act, 1955, praying to grant interim monthly maintenance to her and also to three children.

4.The trial Court, after considering the available evidence on record, has allowed the petition in part and thereby directed the respondent therein to give interim monthly maintenance to the tune of Rs.1,500/- to the petitioner and also to give a sum

of Rs.3000/- per mensem towards interim maintenance to three children by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant/respondent has sparingly contended to the effect that Section 24 of the Hindu Marriage Act, 1955 is not an enabling Section to claim interim monthly maintenance to children, but the trial Court, without considering the provisions of the said Section, has erroneously awarded a sum of Rs.3,000/- as interim monthly maintenance to three children. Under the said circumstances, the order passed by the trial Court is liable to be modified.

6.The learned counsel appearing for the respondent/petitioner has contended to the effect that all the children of both the appellant and respondent are under the care and custody of the respondent/petitioner and she is not having sufficient means to maintain herself and also her children. Under the said circumstances, the trial Court has rightly passed the impugned order and the same does not require any interference.

7.It is an admitted fact that the respondent herein, as petitioner, has filed H.M.O.P.No.109 of 2015, on the file of the trial Court. During pendency of the same, I.A.No.542 of 2015 has been filed under Section 24 of the Hindu Marriage Act, 1955, for getting interim monthly maintenance to her and also to three children. As indicated above, the trial Court has passed the impugned order.

8.The main grievance expressed on the side of the appellant/respondent is that there is no provision in Section 24 of the Hindu Marriage Act, 1955 so as to grant interim monthly maintenance to children.

9.On the basis of the contention put forth on the side of the appellant/respondent, this Court has perused the provision of Section 24 of the said Act, wherein, it has been explicitly stated to the effect that only a party to the proceeding can invoke the said Section. But in the instant case, as rightly pointed out on the side of the appellant/respondent, the trial Court has awarded Rs.3,000/- towards interim monthly maintenance to three children.

10.Considering the fact that the provision of Section 24 of the Hindu marriage Act, 1955 does not permit any party to the proceeding to seek interim monthly maintenance to children and also considering that the trial Court has awarded Rs.3000/- towards interim monthly maintenance to children, this Court is inclined to modify the order as stated infra. Further it is an admitted fact that all the children are under the care and custody of the respondent/petitioner.

In fine, this Civil Miscellaneous Appeal is allowed in part. The order dated 15.3.2016 passed in I.A.No.542 of 2015 in H.M.O.P.No.109 of 2015 by the trial Court is modified as follows:

The appellant/respondent is directed to pay a sum of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) as interim monthly maintenance to the respondent/petitioner and the same should be paid from the date of filing of I.A.No.542 of 2015.

With the above modification, I.A.No.542 of 2015 is allowed in part. The trial Court is directed to dispose of H.M.O.P.No.109 of 2015 before the end of January 2018 and report the same to the registry without fail. If there is any arrear in payment of interim monthly maintenance, the respondent/petitioner is directed to take separate proceedings in the trial Court. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

msk

To

1.The Judge,
Family Court, Villupuram

2.The Section Officer,
VR Section,
High Court, Madras.

3.The Section Officer,
Judicial Section,
High Court, Madras.

+ 1 cc to M/s.Rajeswari Karthikeyan, Advocate, SR.85782

+ 1 cc to Mr.D.S.Thirumavalavan Advocate, SR.86202

C.M.A.No.2069 of 2016

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