

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 1679 of 2017

C. Annamalai .. Appellant

Versus

K.D. Gayathri .. Respondent

Appeal filed under Section 19 of The Family Courts Act, 1988 against the fair and final order dated 03.05.2017 passed in I.A. No. 277 of 2016 in H.M.O.P. No. 542 of 2014 on the file of Family Court, Erode.

For Appellant : Mr. S. Kaithamalai Kumaran

For Respondent : Mr. M. Guru Prasad

JUDGMENT

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

Challenging the order dated 03.05.2017 passed in I.A. No. 277 of 2016 in HMOP No. 542 of 2014 on the file of Family Court, Erode, the husband/appellant has come forward with this appeal contending that the interim maintenance of Rs.20,000/- awarded in favour of the wife/respondent is on the higher side and not proportionate to his income.

2. The marriage between the appellant and the respondent was solemnised on 21.02.2011 at Devi Marriage Hall, Erode as per Hindu rites and customs. Due to misunderstanding between the appellant and the respondent, the husband/appellant has filed HMOP 542 of 2014 before the Family Court, Erode for dissolution of the marriage on the ground of cruelty. Pending HMOP No. 542 of 2014, the wife/respondent herein has filed I.A. No. 227 of 2016 in HMOP No. 542 of 2014 under Section 24 of the Hindu Marriage Act seeking to direct the husband/appellant to pay a sum of Rs.50,000/- per month as interim maintenance and Rs.20,000/- towards litigation expenses.

3. It is stated in the petition filed under Section 24 of The Hindu Marriage Act that the husband/appellant is working as an Audit Manager in Suri and Company, Coimbatore and drawing a salary of Rs.60,000/- per month even in the year 2011. That apart, the husband/appellant is also looking after the affairs of the said office situated at Coimbatore as well as Coonoor

Branch Office and earning not less than Rs.1,00,000/- per month. On the contrary, the wife/respondent herein is unemployed and she is finding it difficult to maintain herself. In such circumstances, she has filed the petition under Section 24 of The Hindu Marriage Act seeking to direct the husband/appellant to pay a sum of Rs.50,000/- per month towards monthly maintenance and Rs.20,000/- towards one time litigation expenses.

4. The petition filed by the wife/respondent was resisted by the husband/ appellant by contending that it is incorrect to state that he is receiving a sum of Rs.1,00,000/- as monthly salary. On the contrary, the husband/appellant is receiving a sum of Rs.52,500/- as salary out of which a sum of Rs.30,000/- is being deducted towards housing loan. According to the husband/appellant, the balance sum of Rs.22,500/- is grossly insufficient and inadequate for him to maintain himself as also his aged parents who are suffering from various age related ailments. Therefore, the husband/appellant prayed for dismissal of the Petition.

5. In order to prove the income of the appellant, no evidence was let in before the Family Court. However, the Family Court concluded that the appellant being an Auditor by profession, there are chances for him to earn atleast Rs.80,000/- per month. Therefore, the Family Court directed the appellant to pay Rs.20,000/- per month as interim maintenance to the respondent pending disposal of the Original Petition apart from Rs.20,000/- towards litigation expenses. Aggrieved by such direction issued by the Family Court, Erode, the husband/ appellant has come forward with this appeal.

6. The learned counsel for the appellant vehemently contended that the Family Court directed the appellant to pay a sum of Rs.20,000/- per month to the respondent towards interim maintenance without any tangible evidence made available. Further, according to the counsel for the appellant, the Family Court, on surmises, arrived at a conclusion that the husband/appellant, as an Auditor, has chances to earn a sum of Rs.80,000/-. According to the learned counsel for the appellant, in the absence of any tangible evidence to prove the earning capacity of appellant, the Family Court ought not to have directed him to pay Rs.20,000/- as interim maintenance. Therefore, the learned counsel for the appellant prayed this Court to set aside the order passed by the Family Court and to allow this appeal.

7. On the other hand, the learned counsel for the respondent would submit that even as admitted by the appellant, he is earning a sum of Rs.52,500/- as monthly salary and therefore, the Family Court is justified in directing the appellant to pay a sum of Rs.20,000/- per month towards interim maintenance and prayed for dismissal of the appeal.

8. We have heard the learned counsel for both sides and perused the materials placed on record. Before the Family Court, the wife/respondent has not produced any records to prove the income of the appellant. The Family Court also, without any tangible evidence, on surmises, concluded that the appellant, as an Auditor, has the chance of earning atleast Rs.80,000/- per month and directed him to pay Rs.20,000/- per month as interim maintenance. According to the appellant, out of his salary of Rs.52,500/- a sum of Rs.30,000/- per month is deducted towards housing loan and with the balance amount he has to maintain himself as well as his aged parents. Therefore, according to the counsel for the appellant, the direction issued by the Family Court to pay a sum of Rs.20,000/- to the respondent is wholly unjustifiable. We find force in such submission of the counsel for the appellant. Admittedly, there is no children born out of the wedlock between the appellant and the respondent. While so, we feel that for the purpose of maintaining the respondent, the appellant can be directed to pay a sum of Rs.15,000/- per month as against the sum of Rs.20,000/- awarded by the Family Court.

9. In the result, the order dated 03.05.2017 passed in I.A. No. 277 of 2016 in H.M.O.P. No. 542 of 2014 on the file of Family Court, Erode is modified directing the appellant to pay a sum of Rs.15,000/- per month to the respondent/wife. However, the direction issued by the Family Court to pay a sum of Rs.20,000/- towards litigation expenses shall stand confirmed. The Civil Miscellaneous Appeal stands disposed of accordingly. Taking into consideration of the facts and circumstances of the case, we direct the Family Court, Erode to take up the HMOP No. 542 of 2014 on it's file and to dispose of the same within a period of four months from the date of receipt of a copy of this judgment. Consequently, connected CMP No. 9000 of 2017 is closed.

Sd/-

Assistant Registrar (AR-J)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer, Family Court, Erode.
2. The Section Officer, VR Section, High Court, Madras.

- + 1 cc to Mr. M. Guru Prasad, Advocate SR.64548
+ 1 cc to Mr. A.K. Kumarasamy, Advocate SR.64007