

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.11.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM

and

THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.249 of 2015
and M.P.No.1 of 2015

C.Selvaraj ... Appellant/Respondent/Respondent

Vs

1.S.Jothimani

2.Minor Sivaprakash
Rep. by guardian S.Jothimani

3.Minor Aruna
Rep. by guardian S.Jothimani ... Respondents/Petitioner/
Petitioner

prayer:Civil Miscellaneous Appeal preferred against the order
dated 17.07.2013 made in I.A.No.1736 of 2010 in H.M.O.P.No.1071
of 2009, on the file of the Family Court, Coimbatore.

For Appellant : Mr.A.Deivasigamani
for Mr.G.R.Saravanabhavan
For Respondents : No appearance

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal has been directed
against the order dated 17.07.2013, passed in I.A.No.1736 of
2010 in H.M.O.P.No.1071 of 2009, by the Family Court, Coimbatore.

2.The first respondent herein, as petitioner, has
filed H.M.O.P.No.1071 of 2009 on the file of the trial Court,

under Section 9 of the Hindu Marriage Act, 1955 for getting restitution of conjugal rights, wherein, the appellant herein has been arrayed as respondent. During pendency of the same, the first respondent, for herself and on behalf of her minor children, have filed I.A.No.1736 of 2010 under Section 24 of the Hindu Marriage Act, 1955 for getting the relief of interim monthly maintenance and also litigation expenses.

3.The trial Court, after considering the available evidence on record, has allowed I.A.No.1736 of 2010 in part and thereby, directed the respondent therein [husband] to pay interim monthly maintenance of Rs.5,000/- by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

4.Even though the first respondent has been served with notice, appearance has not been made. Under the said circumstances, this Civil Miscellaneous Appeal has been disposed of on merits.

5.The learned counsel appearing for the appellant/respondent has contended to the effect that the appellant/respondent is getting a monthly salary of Rs.800/-. Since the appellant/ respondent is economically a weak person, he is not in a position to comply with the order passed in I.A.No.1736 of 2010 and therefore, the order passed by the trial Court is liable to be set aside and the petition filed in I.A.No.1736 of 2010 is liable to be dismissed.

6.It is an admitted fact that the first respondent, as petitioner, has filed H.M.O.P.No.1071 of 2009 on the file of the trial Court, for getting restitution of conjugal rights. It is also equally an admitted fact that during pendency of the same, I.A.No.1736 of 2010 has been filed by the first respondent [wife] and her children.

7.The trial Court, after considering the available evidence on record, has awarded a meager sum of Rs.5,000/- towards interim monthly maintenance.

8.The only defence taken on the side of the appellant/respondent is that he is not able to pay the amount fixed by the trial Court, in the order passed in I.A.No.1736 of 2010.

9.Considering the fact that the appellant/respondent is the husband of the first respondent and father of the remaining respondents and also considering that the first respondent has filed H.M.O.P.No.1071 of 2009, legally the appellant/husband is bound to pay interim monthly maintenance to the first respondent/wife.

10.The trial Court, after considering the overall evidence available on record, has rightly passed the impugned order and the same is not liable to be set aside.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order dated 17.07.2013, passed in I.A.No.1736 of 2010 in H.M.O.P.No.1071 of 2009, by the Family Court, Coimbatore, is confirmed. Connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gya

To
The Family Court,
Coimbatore.

C.M.A.No.249 of 2015
and
M.P.No.1 of 2015

MR (CO)
TR (02/01/2018)



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