

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2017

CORAM :-

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

C.M.A.Nos.2498 & 2732 of 2016
and
C.M.P.Nos.19697 of 2016 & 8942 of 2017

P.Kalaivani Appellant in CMA.2498 of 2016 &
Respondent in CMA.2732 of 2016

Vs.

M.Kalaiselvan ... Respondent in CMA.2498 of 2016 &
Appellant in CMA.2732 of 2016

Common Prayer: Civil Miscellaneous Appeals are filed under
Section 19 of the Family Courts Act, 1984, against the
judgment and decree dated 16.06.2016 passed by the learned
Judge, Family Court, Salem in I.A.No.69 of 2015 in
F.C.O.P.No.532 of 2013.

For P.Kalaivani/wife : Ms.P.T.Asha
for M/s.Sarvabhauman Associates

For M.Kalaiselvan/husband : Ms.K.Priya

COMMON JUDGMENT

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

By an order dated 16.06.2016, made in I.A.69 of 2015 in
FCOP.No.532 of 2013, the learned Judge, Family Court, Salem
had directed the husband to pay a sum of Rs.8,000/- towards
monthly maintenance from the date of the order. Challenging
the said order, the husband had filed an appeal in CMA.No.2732
of 2016 and the wife had also filed an appeal seeking for
enhancement from the date of filing of the petition in
CMA.No.2498 of 2016.

2.Since the order impugned in both the appeals are one
and the same, a common order is passed in the present appeals.

3.For the sake of convenience, the parties in both the appeals are herein after referred to as husband and wife.

4.Heard Ms.P.T.Asha, learned counsel for the wife and Ms.K.Priya, learned counsel for the husband.

5.The brief facts of the case is as follows:

a)The marriage between the parties in the present appeals was solemnized on 25.05.2008 and out of the wedlock, a female child by name Anumitha was born on 08.11.2009. Owing to certain misunderstandings between the parties, the wife filed a petition in FCOP.No.532 of 2013 on 11.12.2013 seeking for divorce on the ground of cruelty and desertion. Pending divorce proceedings, the wife had filed an interim application in I.A.No.69 of 2015 seeking for interim maintenance under Section 24 of the Hindu Marriage Act, claiming a sum of Rs.30,000/- per month and a sum of Rs.10,000/- towards litigation expenses.

b)The husband resisted the said petition on various grounds. The Court below on consideration of the grounds raised by both the husband and wife had passed a detailed order dated 16.06.2016 and directed the husband to pay a sum of Rs.8000/- per month as interim maintenance to the wife and child from the date of the order.

c)Both the husband and wife, since aggrieved against the said order have preferred the present appeals.

6.The learned counsel appearing on behalf of the parties raised various grounds attacking the order passed by the Court below. At this juncture, it would be appropriate to mention here that under Section 24 of the Hindu Marriage Act, the relevant consideration for grant of maintenance pendente lite is that if a spouse seeking maintenance has no independent income "sufficient" for her or his support and once the Court reaches its conclusion, it has to grant maintenance and the only discretion left to the Court is with regard to the quantum of maintenance. This proposition has been enunciated by a judgment of the Hon'ble Supreme Court of India reported in Amarjit Kaur Vs. Harbhajan Singh [2003 (10) SCC 228].

7.In the case on hand, the husband had taken a specific stand that he did not have any independent income of his own. The Court below on the other hand while dealing with this aspect had taken into account the fact that the husband is a MBA Post Graduate and that for his survival, there ought to be some income which the Court had tentatively fixed at the rate of Rs.15,000/- per month. In this background, an interim maintenance was arrived at Rs.8000/- per month. When the husband is able to take care of his own basic needs like food, clothing and shelter, the expenses incurred by him for those

basic needs should be treated as his income and accordingly the quantum of maintenance has to be determined. The Hon'ble Supreme Court of India in a case in Amarjit Kaur Vs. Harbhajan Singh [2003 (10) SCC 228] has held that once it is found that the spouse who seeks maintenance did not have any independent income for her support, the Court has to grant maintenance pendente lite. The appellant is therefore, bound to maintain the respondent herein and in our considered view, the sum of Rs.8000/- cannot be said to be exorbitant and unreasonable for the basic maintenance of the wife and the child. Hence, we do not find any reason to interfere with the interim maintenance passed by the Court below.

8.The learned counsel for the wife also tried to impress us by stating that the maintenance ought to have been ordered from the date of the maintenance petition. Though we find force in this argument, we are of the view that the ends of justice would be met if we to direct the Court below to expedite the main petition for divorce and accordingly, there shall be a direction to the learned Judge, Family Court, Salem to dispose of the petition in F.C.O.P.No.532 of 2013 within a period of four months from the date of receipt of the copy of this order.

9.With the above direction, both the appeals stand dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

DP

To

The Judge,
Family Court,
Salem.

+1cc to M/s.Saravabhauman Associates, Advocate, S.R.No.43862
+1cc to Ms.K.Priya, Advocate, S.R.No.43679(09.08.2017)

C.M.A.Nos.2498 & 2732 of 2016
and
C.M.P.Nos.19697 of 2016 & 8942 of 2017

RSK(CO)
CA(25/07/2017)