

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.12.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2766 of 2015
and M.P.No.1 of 2015

J.Sampathkumar .. Appellant

Vs
Gayathri .. Respondent

Civil Miscellaneous Appeal preferred under Section 19[1] of the Family Courts Act, 1984, against the order dated 20.02.2015 made in I.A.No.357 of 2014 in H.M.O.P.No.473 of 2013, on the file of the Principal Family Court, Coimbatore.

For Appellant : Mr.K.Eswar Rao
for Mr.V.S.Kesavan

For Respondent : 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 20.02.2015, passed in I.A.No.357 of 2014 in H.M.O.P.No.473 of 2013, by the Principal Family Court, Coimbatore.

2.The appellant herein, as petitioner, has filed H.M.O.P.No. 473 of 2013, on the file of the trial Court, praying to dissolve the marriage held between him and respondent therein by way of granting a decree of divorce.

3.During pendency of the same, I.A.No.357 of 2014 has been filed by the respondent, as petitioner, under Section 24 of the Hindu Marriage Act, 1955, for getting interim monthly maintenance.

4.The Trial Court, after considering the available evidence on record, has partly allowed the petition and thereby, directed the respondent therein to give a sum of Rs.3,000/- per mensem as interim monthly maintenance and also litigation expenses of Rs.5,000/- by way of passing the impugned order and the same is being challenged in this present Civil Miscellaneous Appeal.

5.Even though the respondent has been served with summons, appearance has not been made. Under the said circumstances, the present Civil Miscellaneous Appeal has been disposed of on merits on the basis of available materials on record.

6.Learned counsel appearing for the appellant/respondent has contended to the effect that the respondent/wife is having sufficient means to maintain herself and under the said circumstances, she is not legally entitled to get interim monthly maintenance. But, the trial Court, without considering the main defence taken on the side of the appellant/respondent, has erroneously granted interim monthly maintenance to the tune of Rs.3,000/- by way of passing the impugned order and the same is liable to be set aside.

7.It is an admitted fact that the appellant/respondent herein, as petitioner, has filed H.M.O.P.No.473 of 2013 on the file of the trial Court, for getting divorce, wherein, the present respondent/petitioner has been arrayed as respondent. During pendency of the same, I.A.No.357 of 2014 has been filed under Section 24 of the said Act.

8.The main defence taken on the side of the appellant/respondent is that the respondent/petitioner is having sufficient means to maintain herself and therefore, she is not entitled to get relief of interim monthly maintenance.

9.It is true that relief under Section 24 of the said Act can be granted, if one of the party to a proceeding is unable to maintain herself/himself.

10.In the instant case, even though a main defence has been taken on the side of the appellant/respondent to the effect that the respondent/petitioner is having sufficient means to maintain herself, no document has been filed for the purpose of substantiating the said contention. Since no document has been filed on the side of the appellant/respondent for the purpose of substantiating the main defence taken on his side, it is needless to say that the defence taken on the side of the appellant/respondent is of no use.

11.The trial Court, after considering the contentions put forth on either side, has rightly awarded a sum of Rs.3,000/- towards interim monthly maintenance and Rs.5,000/- towards litigation expenses.

12.Considering the quantum of amounts awarded by the trial Court, this Court is of the view that the trial Court has reasonably fixed the amounts towards interim monthly maintenance and also litigation expenses. Therefore, viewing from any angle, the order passed by the trial Court does not suffer from any infirmity or illegality and altogether the present Civil Miscellaneous Appeal is dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with out costs. The order dated 20.02.2015, passed in I.A.No.357 of 2014 in H.M.O.P.No.473 of 2013, by the Principal Family Court, Coimbatore is confirmed. The trial Court is directed to dispose of H.M.O.P.No.473 of 2013 before the end of January 2018 and report the same to the Registry without fail.

Connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Family Court,
Coimbatore.
2. The Section Officer,
VR Section,
High Court, Madras.
3. The Section Officer,
Judicial Department,
High Court, Madras.

+1cc to Mr.V.S.Kesavan, Advocate, S.R.No.86059

C.M.A.No.2766 of 2015
and
M.P.No.1 of 2015

GMR(CO)
CS/02/01/18