

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2017

CORAM

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

C.M.A.No.2727 of 2016
and C.M.P.No.19694 of 2016

K.Jaishankar ... Appellant

Vs.

1.B.Revathy

2.J.Gayathri

... Respondents

Civil Miscellaneous Appeal preferred under Section 19 of the Family Courts Act praying to set aside the order dated 24.10.2016 passed in I.A.No.1450 of 2016 in O.P.No.3734 of 2012 by the Principal Family Court, Chennai.

For Appellant : Mr.N.Elumalai
For 1st Respondent : Mr.N.Elayaraja

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 24.10.2016, passed in I.A.No.1450 of 2016 in O.P.No.3734 of 2012, by the Family Court at Chennai.

2.The appellant herein, as petitioner, has filed O.P.No.3734 of 2012, on the file of the trial Court, for getting a decree of divorce, wherein, the first respondent herein has shown as respondent.

3.During pendency of the same, the first respondent, for herself and on behalf of her daughter, as petitioners, have filed I.A.No.1450 of 2016, under Section 24 of the Hindu Marriage Act, 1955, praying to pass an order of interim monthly maintenance and also litigation expenses.

4.The trial Court, after considering the available evidence on record, has partly allowed the petition and thereby, directed the respondent therein to pay a sum of Rs.6,000/- as monthly maintenance to the first petitioner and Rs.4,000/- to the second petitioner, further directed to give a sum of Rs.5,000/- towards litigation expenses 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 contended to the effect that due to intervention of family members of both sides, a compromise talk is going on. Under such circumstances, this Civil Miscellaneous Appeal may be referred to Mediation and Conciliation Centre.

6.Per contra, the learned counsel appearing for the respondents/petitioners has contended that even in the trial Court, an attempt has been made so as to effect compromise and to that effect, a compromise memo has also been filed into Court. But the respondent/husband has failed to take his wife and daughter along with him and therefore, question of making further compromise does not arise.

7.It is an admitted fact that the appellant/respondent has filed O.P.No.3734 of 2012 on the file of the trial Court for getting a relief of divorce. During pendency of the same, the present petition has been filed under Section 24 of the Hindu Marriage Act, 1955 in I.A.No.1450 of 2016. As mentioned supra, the trial Court has directed the respondent therein to pay interim monthly maintenance and also litigation expenses.

8.Considering the fact that the provision of Section 24 of the Hindu Marriage Act, 1955, is applicable only to a party to the proceeding and not applicable to child or children. The interim monthly maintenance granted in favour of the second petitioner by the trial Court is not legally acceptable and the same is liable to be set aside.

9.Further, it is seen from the records that the trial Court has awarded only a sum of Rs.6,000/- to the first petitioner as interim monthly maintenance. Considering the fact that the second petitioner is under the care and custody of the first petitioner, this Court is inclined to modify the quantum of amount given as interim monthly maintenance to the first petitioner and to that extent, this Civil Miscellaneous Appeal is likely to be allowed in part.

In fine, this Civil Miscellaneous Appeal is allowed in part without costs. The appellant/respondent is directed to pay a sum of Rs.8,000/- as interim monthly maintenance to the first petitioner. The interim monthly maintenance awarded in favour of the second petitioner by the trial Court is set aside. In respect of remaining order of the trial Court, there is no modification. The trial Court is directed to dispose of O.P.No.3734 of 2012 before the end of February 2018 and report the same to the registry without fail.

Connected Miscellaneous Petition is dismissed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Principal Judge
The Principal Family Court,
Chennai.

Copy to

The Section officer
Judicial Section
High Court, Madras.

+1 CC to Mr.N. Elaiyaraja, Advocate sr 87222.

+1 Cc to Mr.N. Elumalai, Advocate sr 86644

C.M.A.No.2727 of 2016
and
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KJI (CO)
SP(20/12/2017)



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