

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE A.D. JAGADISH CHANDIRA

C.M.A.No.1915 of 2017
and
CMP No.10307 of 2017

Mr.S. Sakthivel Murugan ... Appellant

..Vs..

M.Meena ... Respondent

Civil Miscellaneous Appeal under Section 19 of Family Courts Act, 1984 against the order and decretal order dated 25.04.2017 in I.A.No.5 of 2016 in H.M.O.P No.903 of 2013 on the file of Additional Principal Family Judges Court, Coimbatore.

For Appellant : Mr.C.R. Prasanan

For Respondent : Mr.E.D. Sethupathi

JUDGMENT

(Judgment of the Court was delivered by
A.D.JAGADISHCHANDIRA,J.,)

This Civil Miscellaneous Appeal has been filed by the appellant/husband, questioning the correctness of the order dated 25.04.2017 passed by the Additional Principal Family Court, Coimbatore in I.A. No.5 of 2016 in H.M.O.P. No.903 of 2013.

2.1. The appellant herein has filed H.M.O.P. No.903 of 2013 for divorce under Section 13(1)(i)(a) of the Hindu Marriage Act 1955 (herein after referred to as "the Act") praying to grant a decree of divorce dissolving the marriage conducted between him and his wife/respondent on 09.12.2010.

2.2. Pending the petition for divorce, the respondent/wife has filed I.A. No.5 of 2016 in H.M.O.P. No.903 of 2013 under section 24 of the Act, praying to direct the appellant to pay a sum of Rs.15,000/- towards interim maintenance from the date of petition and also sought for litigation expenses at Rs.30,000/-.

The said application filed by the wife/respondent was contested by the husband/appellant. The Family Court, after hearing both sides and taking into consideration the evidence available on record, allowed the application filed by the wife/respondent herein and directed the husband/appellant to pay a sum of Rs. 3,000/- to the wife/respondent towards monthly maintenance from the date of petition (i.e) 05.01.2016 and also further directed to pay a sum of Rs.10,000/- as onetime payment to the wife/respondent towards litigation expenses.

2.3. Challenging the said order, the husband/appellant is before this Court with this appeal.

3. The learned counsel appearing for the appellant vehemently contended that the Court below has erred in granting maintenance at Rs.3,000/- per month from the date of petition and Rs.10,000/- towards litigation expenses overlooking the oral and documentary evidence on record.

4. It was contended by the learned counsel for the appellant/husband that the appellant/husband is only working as a acting driver in a tourist taxi and gets work for few days in a month and hence he is earning a meagre income. However according to him, his wife was employed as a teacher and getting a monthly salary of Rs.15,000/- per month and her parents are having own house and building and the mother of the wife was getting Family pension.

5. Per contra, it was contended by the learned counsel for the respondent/wife that though the wife had undergone teacher training, she has not completed the probation period and thus not paid salary.

6. The learned counsel for the respondent/wife further contended that the husband was previously working at "OMAN", Dubai for more than 10 years before marriage and after that he was under the services of L.G. Balakrishnan and Brothers Ltd., a reputed company at Coimbatore. According to the learned counsel for the respondent, the husband is having huge investment in Bank from which he is earning interest. That apart, the cash dowry and jewellery given at the time of marriage had also been used by the appellant / husband.

7. It is also stated by the learned counsel for the respondent/wife that her husband is presently working as a tourist taxi driver and is earning between Rs.1000/- to Rs.2000/- per day and therefore, he can pay maintenance.

8. We have heard learned counsel on both sides and perused the materials placed on record.

9. In an application filed either by the husband or wife under section 24 of the Act, financial status of the parties and their capabilities to maintain himself or herself, as the case may be, during the pendency of the matrimonial proceedings is required to be considered.

10. The Family Court by taking into consideration the oral and documentary evidence adduced by the both parties had fixed the quantum of the interim maintenance at Rs.3,000/- per month to the respondent/wife and Rs.10,000/- for litigation expenses.

11. It is the admitted case that the husband is working as a Tourist Taxi driver. Though it has been contended by the husband that the wife had completed D.T.Ed. and is working as a teacher, the Family Court had held that though the husband has stated that she is working as a teacher and drawing a salary Rs.15,000/- per month, he has not filed any piece of evidence to establish her income by way of salary of Rs.15,000/- per month and also disbelieved other averment relating to other income of the wife and had come to the conclusion that the husband had suppressed his income and had directed him to pay a sum of Rs.3,000/- per month towards interim maintenance and Rs.10,000/- for litigation expenses.

12. Considering the present cost of living, the amount of Rs.3,000/- per month awarded towards interim maintenance and Rs.10000/- towards litigation expenses by the learned Judge, Family Court, Coimbatore, in our opinion, is just and reasonable and it cannot be said to be excessive. Therefore, we find no infirmity in the said order.

13. In the result, we confirm the order dated 25.04.2017 made in I.A. No. 5 of 2016 in H.M.O.P No. 903 of 2013 on the file of Additional Principal Family Judge's Court, Coimbatore and the appellant/husband is directed to pay the arrears of interim maintenance within a period of four weeks from today and thereafter continue to pay the interim maintenance till the disposal of the main O.P. Having regard to the facts and circumstances of the case, we direct the Family Court, Coimbatore to dispose of H.M.O.P No. 903 of 2013 within a period of three months from the date of receipt of a copy of this Judgment.

14. With the above observation, the Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is also closed.

Lbm

14.07.2017

This matter having been listed under the caption for being mentioned on 18.08.2017 pursuant to the order of this court dated 14.07.2017 and made herein in the presence of the aforesaid counsels on the either side, the Court made the following Order:-

(Order of the Court was made by A.D. Jagadish Chandira, J)

At the instance of the learned counsel for the appellant, the matter has been taken up today under the caption for "Being mentioned".

2.This court, while dismissing the appeal on 14.07.2017, in paragraph No.13 of the Judgment, directed the appellant/husband to pay the arrears of interim maintenance within a period of four weeks from that day.

3.It is represented by the learned counsel for the appellant that he has received the copy of this Judgment belatedly and by the time, the four weeks time granted by this Court got expired. Hence, the learned counsel for the appellant sought for extension of time.

4.Considering the submissions made by the learned counsel for the appellant, time granted by this court to pay the arrears of interim maintenance, is extended for a further period of three weeks from today.

lbm/sr

18-08-2017

Sd/-
Deputy Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

The Additional Principal Family Court,
Coimbatore.

+1 cc to Mr.C.R.Prasanan Advocate sr 59339

+1 cc to Mr.E.D.Sethupathi Advocate sr 59398

C.M.A. No.1915 of 2017

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