

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.12.2017

CORAM

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

C.M.A.No.7 of 2016
and C.M.P.No.39 of 2016

V.Dhanapal ... Appellant/Respondent/Petitioner

Vs.

N.Malliga ... Respondent/Petitioner/Respondent

Prayer:-

Civil Miscellaneous Appeal preferred under Section 19 of the Family Courts Act praying to set aside the order dated 05.05.2015 passed in I.A.No.41 of 2014 in H.M.O.P.No.137 of 2014 by the Family Court, Erode.

For Appellant : Mr.Karthick Kannan
for Mr.Kaithamalai Kumaran

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 05.05.2015, passed in I.A.No.41 of 2014 in H.M.O.P.No.137 of 2014, by the Family Court, Erode.

2.The appellant herein, as petitioner, has filed H.M.O.P.No.137 of 2014, on the file of the trial Court, praying to pass a decree of divorce on the ground of cruelty, wherein, the present respondent has been shown as respondent.

3.During pendency of the same, the respondent[wife], as petitioner, has filed I.A.No.41 of 2014, 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 give interim monthly maintenance to the tune of Rs.5,000/- to the petitioner 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 respondent is not present.

6.The learned counsel appearing for the appellant/respondent has contended to the effect that the appellant/respondent is having psychiatric problems and also not having independent income and under the said circumstances, he is not in a position to maintain the respondent/petitioner and the trial Court, without considering the contentions put forth on the side of the appellant/respondent, has erroneously passed the impugned order and therefore, the impugned order passed by the trial Court is liable to be set aside and the petition filed in I.A.No.41 of 2014 is liable to be dismissed.

7.It is an admitted fact that the appellant, as petitioner, has filed H.M.O.P.No.137 of 2014 on the file of the trial Court, for getting a decree of divorce on the ground of cruelty. It is also equally an admitted fact that during the pendency of H.M.O.P.No.137 of 2014, I.A.No.41 of 2014 has been filed by the respondent/wife for getting interim monthly maintenance.

8.As adverted to earlier, the trial Court has awarded a sum of Rs.5,000/- towards interim monthly maintenance and thereby, allowed the petition in part.

9.The main defence taken on the side of the appellant/respondent is that he is having psychiatric problems and he is not in a position to maintain the respondent [wife].

10.Even though such plea has been raised on the side of the appellant/respondent, no document has been forthcoming for the purpose of substantiating the said contention. Since no document has been filed on the side of the appellant/respondent so as to substantiate the contention put forth on his side, it is needless to say that the plea raised on the side of the appellant/ respondent is liable to be rejected.

11.The trial Court, after considering the divergent contentions raised on either side, has rightly awarded a meager sum of Rs.5,000/- towards interim monthly maintenance to the respondent/wife.

12.Considering the aforesaid factual circumstances, the

contention put forth on the side of the appellant/respondent cannot be accepted and the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order dated 05.05.2015 passed in I.A.No.41 of 2014 in H.M.O.P.No.137 of 2014 by the trial Court is confirmed. The trial Court is directed to dispose of H.M.O.P.No.137 of 2014 before the end of February 2018 and report the same to the registry without fail.

Connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gya

To

The Family Court,
Erode.

Copy To

1. The Registrar(Judicial)
High Court, Madras.
2. The Section Officer,
Judicial Section,
High Court, Madras.
3. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.Kaithamalai Kumaran, Advocate, S.R.No.86011

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MR(CO)
CS/04/01/18