

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.10.2017

CORAM

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

C.M.A.No.2412 of 2017

and C.M.P.No.13056 of 2017

K.Ganesh Kumar ... Appellant/Respondent/Petitioner

Vs

N.S.Sudha ... Respondent/Petitioner/Respondent

Civil Miscellaneous Appeal preferred under Section 19[1] of the Family Court Act r/w Section 151 of the Code of Civil Procedure, 1908, against the order and decretal order dated 10.03.2017 made in I.A.No.839 of 2014 in O.P.No.321 of 2012 on the file of the I Additional Family Court, Chennai.

For Appellant : Ms.S.K.Priya
For Respondent : Mr.M.Kamalakaran

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 10.03.2017 passed in I.A.No.839 of 2014 in O.P.No.321 of 2012 by the I Additional Family Court, Chennai.

2. The appellant herein as petitioner has filed O.P.No.321 of 2012 on the file of the trial Court for getting the relief of divorce on the ground of cruelty, wherein, the present respondent has been shown as respondent. During pendency of the same, the respondent herein as petitioner has filed the petition in question under Section 24 of the Hindu Marriage Act, 1955, for getting interim monthly maintenance and also litigation

expenses.

3. It is averred in the petition that the respondent/husband has been drawing a sum of Rs.40,000/- per mensem. The petitioner is not having sufficient wherewithal to maintain herself and also litigation expenses. Under such circumstances, the present petition has been filed.

4. In the counter filed on the side of the respondent, it is averred to the effect that the petitioner is having sufficient means to maintain herself and further, it is false to allege that the respondent has been drawing monthly income of Rs.40,000/- and there is no merit in the petition and therefore, the same deserves to be dismissed.

5. The trial Court, after considering the divergent contentions raised on either side, has directed the respondent to pay a sum of Rs.3,000/- in addition to Rs.4,000/- given in Lok Adalat and also directed the respondent to pay 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.

6. Learned counsel appearing for the appellant/respondent has vehemently contented to the effect that the appellant/respondent is not having any income and already he has paid a sum of Rs.4,000/- per mensem as decided by Lok Adalat. The trial Court, without considering the amount already fixed by Lok Adalat, has erroneously directed the appellant/respondent to pay additional sum of Rs.3,000/- per mensem from the date of filing of the petition and at such circumstances, the quantum fixed by the trial Court is liable to be modified.

7. Per contra, the learned counsel appearing for the respondent/petitioner has also equally contended that the appellant/respondent is serving in a software company and also drawing monthly income of Rs.40,000/- and the trial Court, after considering the paying capacity of the appellant/respondent, has rightly awarded an additional amount of Rs.3,000/- per mensem and also Rs.5,000/- towards litigation expenses and therefore, the order passed by the trial Court need not be modified.

8. It is an admitted fact that the appellant/respondent as petitioner has filed O.P.No.321 of 2012 on the file of the trial Court, for getting divorce on the ground of alleged cruelty. It is also equally an admitted fact that during pendency of the

same, the petition in question has been filed in I.A.No.839 of 2014 under Section 24 of the Hindu Marriage Act, 1955, for getting interim monthly maintenance together with litigation expenses. Further, it is an admitted fact that through Lok Adalat, the appellant/respondent has been directed to pay a sum of Rs.4,000/- per mensem as interim monthly maintenance to the respondent/petitioner.

9. The main grievance expressed on the side of the appellant/respondent is that already a sum of Rs.4,000/- has been fixed through Lok Adalat as interim monthly maintenance and the trial Court, without considering the said aspect, has imposed an additional burden by way of directing the appellant/respondent to pay a sum of Rs.3,000/- per mensem.

10. Even though on the side of the respondent/petitioner, it has been alleged to the effect that the appellant/respondent has been working in a software company and drawing a monthly salary of Rs.40,000/-, no clinching evidence is available and also on the basis of quantum of amount fixed by Lok Adalat, this Court is inclined to modify the quantum fixed by the trial Court as follows :

In fine, this Civil Miscellaneous Appeal is allowed in part. The quantum of interim monthly maintenance fixed by the trial Court is reduced to Rs.1,000/- per month from Rs.3,000/-. In aggregation, the appellant/respondent is bound to pay Rs.5,000/- per mensem. In other aspects, the impugned order passed by the trial Court is confirmed. Further, the trial Court is strictly directed to dispose of O.P.No.321 of 2012 before the end of December 2017 and report the same to the registry without fail.

Connected Civil Miscellaneous Petition is dismissed. No costs.

सत्यमेव जयते

-Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

WEB COPY

To
1 The I Additional Family Court,
Chennai.

2 The Section Officer,
Judicial Section, High Court, Madras

3 The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to M/s.M.Kamalakannan, Advocate Sr.No. 71120

C.M.A.No.2412 of 2017

and

C.M.P.No.13056 of 2017

CO (CNR)

RRI 28/10/2017



WEB COPY