

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CMA.No.2662 of 2017

and CMP.No.14732 of 2017

Anuradha Gandhiraj Appellant/Petitioner/
Respondent

Vs.

Bharath Kulandaivelu Respondent/Respondent/
Petitioner

PRAYER : Appeal filed under Section 19 of the Family Courts Act, 1984 against the order dated 26.11.2016 made in IA.No.1127 of 2016 in OP.No.300 of 2015 on the file of the III Additional Judge, Family Court, Chennai.

For appellant : Mr.S.T.P.Kuilmozhi.
For respondent : Mr.A.Arulmozhi.

JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

The Civil Miscellaneous Appeal is filed against the order dated 26.11.2016 made in IA.No.1127 of 2016 in OP.No.300 of 2015 on the file of the III Additional Judge, Family Court, Chennai.

2. The brief facts of the case is that the appellant and the respondent herein are wife and husband, the marriage took place between the parties on 23.08.2001 as per Hindu rites and customs, out of the marriage wedlock the parties are having 13years and 8years male children. The respondent/husband filed petition for divorce against the appellant/wife on the ground of cruelty. While the said petition was pending the appellant herein filed IA.No.1127 of 2016 seeking interim maintenance and for litigation expenses under Section 24 of the Hindu Marriage

Act stating that the respondent abandoned the wife and children and went away on 16.10.2014. The respondent is employed at Wipro Limited, Guindy as Project Manager, earlier the respondent worked for JP Morgan at Japan and made huge savings and converted the same into investments on landed properties and the respondent is just paying a sum of Rs.18,500/- towards the house owner for rent and maintenance and he has got huge amount of deposits and as on date he is earning a sum of Rs.20,00,000/- p.a. A sum of Rs.20,700/-p.m. which is the rent derived from the joint property situated at Bangalore is still being deposited in the account of the appellant, the said amount is not sufficient for monthly maintenance of her and children in order to lead a life befitting the status of her husband. Hence, the appellant prays for a monthly maintenance of Rs.50,000/-p.m. besides rent towards monthly maintenance and a sum of Rs.1,00,000/- as litigation expenses.

3. The respondent/husband contended that he employed in Wipro limited and his monthly take home salary is Rs.1,00,000/- out of his salary he has to take care of himself and his aged parents and he was paying the rent for his residence at Chennai and he cannot meet out the greedy exorbitant claim of the wife demanding a sum of Rs.35,000/-p.m. to each child (totally Rs.70,000/-p.m.) and Rs.50,000/- to the appellant/wife for monthly maintenance. The respondent further submits that the father of the appellant worked in ISRO and owns three houses in Coimbatore and the petitioner and her father are financially sound and well settled. The apartment at Bangalore fetches a rent of Rs.25,000/-p.m., the rent was received by the appellant/wife and the respondent permits the appellant to use the rent for her monthly expenses. The respondent is ready to meet all the educational expenses of his children subject to direct payment by him. Hence, the respondent prays for dismissal of the petition.

4. After considering the submissions made on both the parties, the trial Court allowed the petition directing the respondent/husband to pay a sum of Rs.50,000/-p.m. to the wife and children from May 2016 as interim maintenance and a sum of Rs.10,000/- towards litigation expenses, directing the husband to pay the said amount on or before 5th of every English Calendar month. The above said order is passed based on the mutual understanding between the parties. In this regard, it is pertinent to refer the portion of the order as follows :-

At the time of enquiry it is mutually agreed by both the parties viz., the petitioner and the respondent in the open Court that the respondent has to pay a sum of Rs.50,000/- per month for the period from May 2016 towards the education expenses of the child and that the petitioner has to hand over the key of the

apartment at Bangalore to the respondent. As agreed by the parties as stated supra, the petition is allowed, directing the respondent to pay a sum of Rs.50,000/- per month to the petitioner from May 2016 as interim maintenance and a sum of Rs.10,000/- towards litigation expenses to the petitioner and the petitioner is directed to handover the key of the Bangalore premises to the respondent, while complying the award as aforesaid.

5. Aggrieved against the order passed by the Family Court, Chennai, the wife has approached this Court by way of civil miscellaneous appeal.

6. Heard the rival submissions made on both sides and perused the records.

7. The appellant/wife has raised the following among other grounds that the I.A. has been filed on 31.03.2015, whereas the trial Court ordered for interim maintenance of Rs.50,000/- from May 2016 is highly erroneous and the appellant neither consented nor agreed to the said terms as mentioned in the fair order at any point of time. The terms of interim maintenance as mentioned in fair order is purely based on the role played by counsel. The appellant neither agreed orally nor submitted any written consent for the terms as mentioned in the order, but in fact she raised strong objections to hand over the key to respondent in the open Court itself. Hence, prays to set aside the order of the Family Court.

8. It is relevant to state that it is the order passed only in the IA for interim maintenance filed by the wife under Section 24 of the Hindu Marriage Act. The trial Court has mainly relied on mutual agreement between the parties in the open Court, based on the mutual agreement the trial Court passed the said order.

9. The learned counsel for the appellant would submit that they have filed the petition during March 2015, whereas the trial Court directed the respondent/husband to pay the monthly maintenance from May 2016 and the appellant/wife had never admitted to hand over the key of the Bangalore apartment and raised strong objection for handing over the flat key and the trial Court counsel have played vital role in this regard.

10. On perusal of the trial Court order, it is seen that as mutually agreed by both the parties in the open Court, the trial Court directed the respondent/husband to pay a sum of Rs.50,000/- p.m. to wife and children and made an observation in the same order directing the petitioner/wife to hand over the

key of the Bangalore premises to the respondent. The trial Court after considering the monthly earning of the respondent, passed the interim maintenance to pay a sum of Rs.50,000/-p.m. to the wife and children and it is fair on the part of the appellant/wife to hand over the key of the Bangalore flat to the respondent.

11.No appeal lies against the consent order. The parties cannot challenge the order by way of appeal or revision as against the consent order and the appeal is not maintainable. Even otherwise, the order was passed in the IA as interim maintenance and considering the income of the respondent/husband and the support which is extended by the respondent to the appellant, this Court feels the order passed by the trial Court is reasonable and there is no reason to interfere with the order passed by the trial Court and the appeal is liable to be dismissed. It is open to both the parties to agitate their respective claims in the main petition during the course of trial/enquiry.

12. In the result, the civil miscellaneous appeal stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To
The III Additional Judge, Family Court, Chennai.

+1 cc to M/s.S.T.P.Kuzil mozhi Advocate sr 63720
+1 cc to M/s.A.Arul mozhi Advocate sr 63502

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