

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 2668 of 2017
and
C.M.P. No. 14774 of 2017

Simon Jude Denis .. Appellant/Respondent

Versus

Margaret Sonia .. Respondent/Petitioner

Appeal filed under Section 19 of The Family Courts Act against the order dated 24.04.2015 passed in I.A. No. 3158 of 2013 in O.P. No. 2316 of 2013 on the file of Principal Judge, Family Court, Chennai.

For Appellant : Mr. B. Ganesha Moorthy
For Respondents : Mr. C.A. Thiagarajan

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant/husband has come forward with this appeal against the order dated 24.04.2015 passed in I.A. No. 3158 of 2013 in O.P. No. 2316 of 2013 on the file of Principal Judge, Family Court, Chennai. By the said order dated 24.04.2015, the Family Court directed the appellant to pay a sum of Rs.20,000/- per month to the respondent as well as the minor son, totalling Rs.40,000/- as maintenance from the date of filing the petition.

2. The marriage between the appellant and the respondent was solemnised on 19.09.2007 at National Shrine of St. Thomas Basillica, Santhome, Chennai - 600 004, as per Christian rites and customs in the presence of elders of both sides. Due to the wedlock between the appellant and the respondent, a male child was born on 13.04.2009. Due to serious matrimonial dispute, the wife/respondent has filed O.P. No. 2316 of 2013 under Section 10 (i) (x) and (xi) of The Indian Divorce Act for dissolution of the marriage solemnised between the respondent and the appellant on the ground of desertion.

3. The husband/appellant resisted the claim petition filed by the respondent, however, prayed for grant of consent divorce by dissolving the marriage solemnised on 19.09.2017.

4. When the Petition for dissolution of the marriage was pending, the respondent has filed the I.A. No. 3158 of 2013 under Section 36 of The Indian Divorce Act seeking interim maintenance of Rs.2,00,000/- per month for herself and the minor son Rishon. In the affidavit filed in support of the Petition for maintenance, it was contended by the respondent that the appellant was working as Second Engineer in Merchant Navy and earning approximately Rs.5,00,000/- as salary per month. It was further stated that the appellant totally neglected her and the minor son and they are left without any source of income to survive. The respondent is looking after her parents for even petty expenses of herself and the minor child and therefore, the appellant is bound to maintain them.

5. The application for maintenance was resisted by the appellant by contending that he is working as Chief Engineer in Merchant Ships on contract basis and he has no regular and permanent work. Once in six months or three months, he will get work assignment on contract basis and he would earn Rs.1,00,000/- per month, which is just sufficient for him to meet his personal expenses and to take care of the medical expenses of his aged parents. On the other hand, the respondent is working as Assistant Manager (HR) in Indian Oil Corporation, Tondiarpet, Chennai and she is earning Rs.60,000/- per month. Further, the father of the respondent was employed as Senior General Manager in Hyundai Cars and retired from service. The respondent is living in the house owned by her father. Therefore, the appellant prayed for dismissal of the petition for maintenance.

6. Before the Family Court, no witness was examined. The respondent has marked resignation letter issued to her as Ex.R1 and the copy of wage schedule for Indian Officers - The Maritime Union of India as Ex.R2. The Family Court, upon considering documentary evidence, concluded that the respondent has resigned her employment with Indian Oil Corporation as could be evident from Ex.R1 and therefore she is left with no source of income. Therefore, the Family Court concluded that the respondent is unable to maintain herself and the minor son and consequently, the appellant is bound to pay maintenance to her. Accordingly, the Family Court directed the appellant to pay a sum of Rs.20,000/- each to the respondent and the minor son as maintenance per month.

7. When the appeal was taken up for hearing before this Court, the respondent/ wife has filed an affidavit dated

27.06.2017 which reads as follows:-

"2. I submit that interim maintenance petition was filed on 31.10.2013 and the same was ordered on 24.04.2015 to pay the maintenance of Rs.20,000/- per month to the respondent and her elder son Rishon totalling to Rs.40,000/- from 31.10.2013 to till the date of disposal of the main petition filed in O.P. No. 2316 of 2013. I submit that since the petitioner failed to pay the maintenance, I filed an E.P. No. 36 of 2015. After filing Execution Petition, the petitioner paid a sum of Rs.9,20,000/- on various dates and the balance of Rs.7,20,000/- is liable to be paid. I further submit that since the petitioner failed to appear before the Family Court he has been set exparte on 06.04.2017 and ex parte decree was passed on 28.04.2017. I submit that since the main petition is ordered this appeal is infructuous and is liable to be dismissed. Further, I undertake that I shall not claim the balance maintenance of Rs.7,20,000/-

8. In the light of the above affidavit of undertaking filed by the respondent/wife, the husband/appellant has also filed an affidavit dated 26.07.2017 which reads as follows:-

"4. I respectfully submit that the above C.M.A. was already filed before this Honourable Court as against the order passed in the above I.A. along with the petition to condone the delay in filing appeal and when the matter came up before this Honourable High Court, it was represented on behalf of the respondent that the respondent herein will not claim the arrears of maintenance amount of Rs.7,20,000/- and subsequent monthly maintenance.

5. I respectfully submit that so far I have not filed any petition to set aside the exparte decree passed in the above divorce petition in O.P. No. 2316 of 2013 before the Hon'ble Principal Judge, Family Court at Chennai. I firmly agree the exparte divorce order in O.P. No. 2316 of 2016.

Therefore, I most respectfully pray that this Honourable High Court may be pleased to record this undertaking affidavit and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

9. Having regard to the fact that the present appeal is filed by the husband/appellant as against an order passed by the Family Court directing him to pay maintenance of Rs.20,000/- per month to the respondent and the minor son totalling a sum of Rs.40,000/- per month and the wife/respondent has given up her

claim for the balance maintenance amount payable by the husband/appellant by filing an affidavit of undertaking besides that the Original Petition filed by the wife/ respondent itself was decreed exparte by the Family Court on 28.04.2017, we feel that no further adjudication is required in this appeal and the order dated 24.04.2015 passed in I.A. No. 3158 of 2013 in O.P. No. 2316 of 2013 on the file of Principal Judge, Family Court, Chennai deserves to be confirmed.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed by recording the affidavit of undertaking dated 27.06.2017 filed by the wife/respondent and the affidavit of undertaking dated 26.07.2017 filed by the husband/appellant. No costs. Consequently, connected miscellaneous petition is closed. The affidavits of undertaking filed by the appellant and the respondent mentioned above shall form part of the records.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rsh

To

Principal Judge
Family Court, Chennai

+1 CC to Mr. B. Ganesha Moorthy, Advocate sr 65555

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CMA No. 2668 of 2017

RV(CO)
sp(31/10/2017)

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