

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR. JUSTICE M.S.RAMESH

C.M.A.No.335 of 2017
and
C.M.P.No.2403 of 2017

S.Prathap

... Appellant

Vs.

Gayathri

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, against the order dated 20.12.2016 passed by the learned Principal Judge, Family Court, Chennai in I.A.No.1817 of 2016 in O.P.No.3927 of 2015.

For Appellant : Mr.E.J.Ayyappan

For Respondent : No Appearance

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH.J.)

The present appeal is against an order dated 20.12.2016 passed in I.A.No.1817 of 2016 in O.P.No.3927 of 2015 on the file of the learned Principal Judge, Family Court, Chennai, directing the appellant/husband to pay a sum of Rs.15,000/- per month to the respondent and her minor son from the date of the interim petition.

2.The case of the appellant is as follows:

a)The appellant married the respondent herein on 29.11.2009. Out of the wedlock, a son was born to them on 05.10.2010. Owing to certain misunderstandings between them, the respondent herein had filed a petition in O.P.No.3927 of 2015 before the learned Principal Judge, Family Court, Chennai seeking for divorce on the ground of cruelty and desertion. Pending petition, the respondent had filed an interim application on 20.12.2016, claiming a sum of Rs.40,000/- per month as interim maintenance for herself and her son.

b)According to the respondent/wife, the appellant was employed as an Engineer in Saint Gobain Glass Factory, Sriperumpudur and drawing a sum of Rs.80,000/- per month.

Since the respondent/wife is still studying and earning a meagre income of Rs.15,000/- as stipend, she was unable to maintain herself as well as the child and therefore, she had filed the application for interim maintenance.

c)The appellant/husband on the contrary had filed a counter affidavit stating that his income was only Rs.52,900/- per month and not Rs.80,000/- and since the respondent already had an income of Rs.15,000/- p.m., he is not liable to pay the maintenance.

d)The learned Principal Judge, Family Court, Chennai, had partly allowed the application by directing the appellant/husband to pay a sum of Rs.15,000/- per month for the respondent and her son towards interim maintenance.

e)Since the trial Court had not taken into consideration the fact that the respondent was gainfully employed that sufficient means to maintain herself and her child, the present appeal has been filed.

3.Heard Mr.E.J.Ayyappan, learned counsel for the appellant.

4.The point for consideration in the present appeal is as to whether the order of maintenance in favour of the respondent/wife and her child can be sustained or not.

5.It is not in dispute that the respondent herein is the wife of the appellant. Neither is it disputed that the respondent is employed as an Engineer in Saint Gobain Glass Factory, Sriperumbadur. What is disputed is that the appellant/husband was not earning a sum of Rs.80,000/- per month as claimed by the respondent/wife. However, the appellant/husband in the counter affidavit admitted that he is drawing a net income of Rs.50,000/- per month. As such, it can be only concluded that the appellant has sufficient means to pay monthly maintenance for his wife and child.

6.The learned counsel for the appellant/husband however claimed that the wife is gainfully employed and drawing a sum of Rs.15,000/- per month as stipend which according to him is sufficient to maintain herself and her child and therefore submitted that the Family Court had not properly considered this aspect while ordering the application for maintenance.

7.The respondent/wife has not filed an appeal seeking for enhancement of the amount as against the order of the Court below. Though the respondent was drawing a stipend of Rs.15,000/- per month, she found it necessary to file the present application seeking for interim maintenance since her stipend was inadequate to meet both the ends. The Court below had in fact taken into consideration this factor and after giving due regard to the respondent/wife's own income, ordered

reasonable sum of Rs.10,000/- per month to both the wife and the child.

8. Section 24 of the Hindu Marriage Act provides that when a spouse has no independent income "sufficient" for her or his support, the Court may order the respondent to pay such a sum having regard to the "petitioner's own income" and the income of the respondent. As such, there is no bar under Section 24 of the Hindu Marriage Act for the purpose of grant of maintenance even if he or she has an independent income provided such income is insufficient for support. Therefore, the relevant consideration for grant of maintenance pendente lite is that the spouse should not have sufficient income for her/ his support and when once the Court reaches its conclusion in this regard, it has to grant maintenance and the only discretion left with the Court is with regard to the quantum of maintenance.

9. In the present case, the Court below had rightly rejected the respondent/wife claim of Rs.40,000/- and awarded a sum of Rs.10,000/- per month alone which is reasonable for the basic sustenance of the wife and her child.

10. In view of the same, we do not find any reason to interfere with the order of the Court below granting interim maintenance. Accordingly, the Civil Miscellaneous Appeal stands dismissed. Consequently, connected Miscellaneous Petition is also closed. There shall be no orders as to costs.

11. However, it is seen that the main petition seeking for divorce was filed on 09.10.2015 and has been pending for quiet some time. In our view, it would be appropriate to direct the Court below to expedite the main case in the interest of the parties. Hence, there shall be a direction to the learned Principal Judge, Family Court, Chennai to dispose of the main petition in O.P.No.3927 of 2015 within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

The Principal Judge,
Family Court, Chennai.

C.M.A.No.335 of 2017 and
C.M.P.No.2403 of 2017

MV (CO)

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CA (29/08/2017)