

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2017
Pronounced on : 20.07.2017

Coram :-

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

C.M.A.No.977 of 2017
and
CMP.No.4857 of 2017

M.Jeganathan ... Appellant/Petitioner

vs.

Sasirekha ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the judgment and decreetal order dated 13.02.2017 passed by the learned Principal Judge, Family Court, Chennai in I.A.No.1326 of 2015 in O.P.No.3396 of 2013.

For Appellant : Mr.V.Neethidurai

For Respondent : Mr.M.Easan
for Ms.Vavusi Vazhakagam

J U D G M E N T

(Judgment of the Court was made by M.S.RAMESH.J.)
The appellant in the present appeal is the husband of the respondent herein.

2.The brief facts of the case are as follows:

i)The appellant had filed a petition under Section 13 (1) (a) of the Hindu Marriage Act in HMOP.No.3396 of 2013 against the respondent herein before the learned Principal Judge, Family Court, Chennai seeking for divorce on the ground of Cruelty.

ii)In the said application, the respondent herein had filed I.A.No.1326 of 2015 under Section 24 of the Hindu Marriage Act seeking for an interim maintenance of Rs.25,000/- towards her maintenance and one time litigation expenses of Rs.40,000/- pending HMOP.No.3396 of 2013.

iii)According to the respondent herein, she was sent out of her matrimonial house and she is at present staying with her parents and that she has no individual source of income to meet her day-today expenses. The respondent had further stated that the appellant herein is employed as a Senior Manager with a leading Data Solutions Company, Porur, Chennai and drawing a sum of Rs.50,000/- per month apart from other perks. The respondent also stated that the appellant herein is also receiving a monthly rent of Rs.25,000/- from his properties through tenants. Hence, she had sought for a monthly maintenance of Rs.25,000/- pending HMOP.No.3396 of 2013 for divorce.

iv)The appellant had filed a counter affidavit in the interim maintenance application denying all the allegations made by the respondent herein and stated that he is working only as Process Officer in AEL Data Company, Valasaravakkam, Chennai and that his monthly salary is Rs.15,000/- and he further stated that out of his monthly salary, he has to take care of his aged parents and had to perform the customary sridhana to his three sisters. The learned Principal Judge, Family Court, Chennai, by an order dated 13.02.2017, directed the appellant herein to pay a sum of Rs.5000/- to the respondent towards interim maintenance from the date of the application together with sum of Rs.5000/- as one time payment towards litigation expenses.

3.Challenging the same, the present appeal has been filed by the husband.

4.Heard Mr.V.Neethidurai, learned counsel for the appellant as well as Mr.M.Easan, learned counsel for the respondent.

5.The learned counsel for the appellant submitted that the appellant was drawing only Rs.15,000/- per month which is not sufficient for taking care of himself and his parents and therefore, the order passed by the learned Principal Judge, Family Court, Chennai in I.A.No.1326 of 2015, granting a sum of Rs.5000/- to the respondent as interim maintenance has to be set aside.

6.The learned counsel for the respondent on the other hand submitted that she has no other source of income and that she is now under the custody and care of her aged parents and was being a burden to them. Hence, the learned counsel submitted that the present appeal deserves to be dismissed.

7.We have carefully considered the submission made by the respective counsels and perused the documents on record.

8.At the outset, it is to be kept in mind that the present appeal is against the order passed in I.A.No.1326 of 2015, under Section 24 of the Hindu Marriage Act which provides for monthly

maintenance for the basic sustenance of the applicant when she does not have independent income of her own. While fixing the quantum of interim maintenance, the status of the parties and the capacity of the respondent to pay the maintenance shall be taken into account. In the case in hand, the appellant has admitted that he is drawing a sum of Rs.15,000/- per month only. The appellant/husband has neither pleaded nor produced any evidence to show that he is earning Rs.15,000/- alone and not Rs.50,000/- as alleged by the respondent herein. Further, it is not known as to whether the parents of the appellant have any income of their own. The appellant, being the husband, is bound to maintain his wife pendente lite. Furthermore, the learned Principal Judge, Family Court, Chennai while granting interim maintenance had believed the statement of the appellant that he is drawing Rs.15,000/- per month and has accordingly granted a sum of Rs.5000/- alone as monthly maintenance pendente lite. In our view, a sum of Rs.5000/- towards interim maintenance cannot be deemed to be exorbitant and the same would be just sufficient to meet the bare necessities and day-to-day expenses of the respondent. The litigation expenses of Rs.5000/- as one time payment is also reasonable.

9. In view of the same, we do not find any merits so as to interfere with the interim order passed by the learned Principal Judge, Family Court, Chennai in I.A.No.1326 of 2015 in HMOP.No.3396 of 2013. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

10. However, considering the fact that the petition filed under Section 13(1)(a) of the Hindu Marriage Act in HMOP.No.3396 of 2013 on the file of the learned Principal Judge, Family Court, Chennai which was presented way back in the year 2013 is still pending, it would be appropriate for this Court to direct the learned Principal Judge, Family Court, Chennai to dispose of the said original petition within a period of four months from the date of receipt of a copy of this order.

11. With the above direction, the Civil Miscellaneous Appeal stands dismissed. Consequently, connected Miscellaneous Petition is also closed. There shall be no orders as to costs.

sd/-
Asst.Registrar (CS VII)

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Sub Asst. Registrar

DP

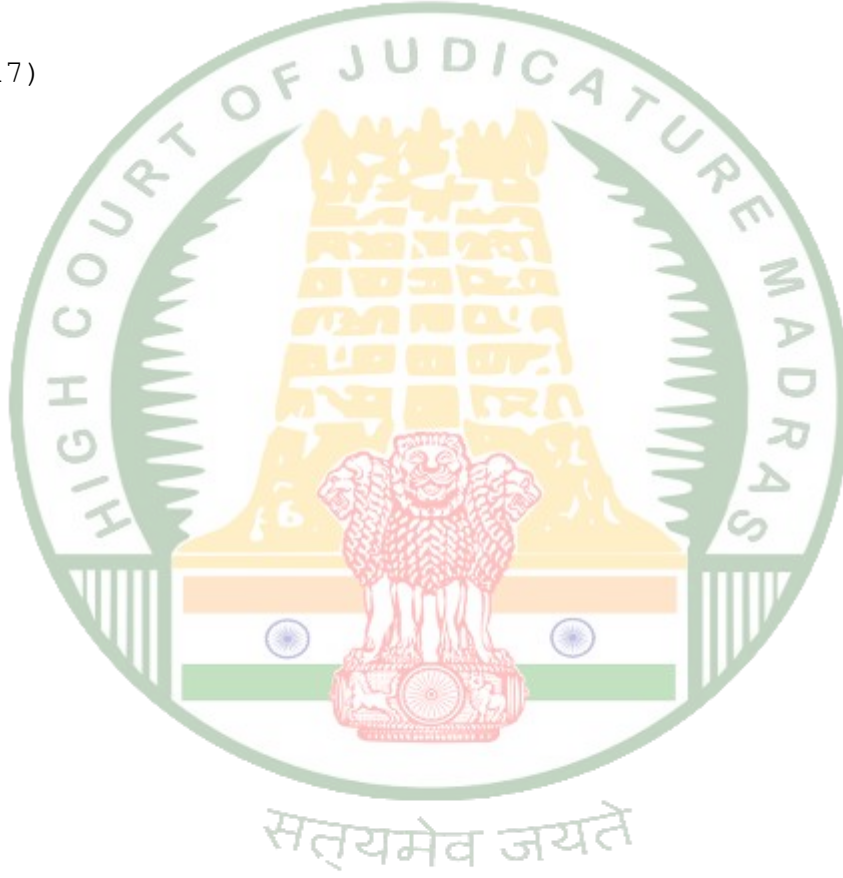
To

The Principal Judge,
Family Court,
Chennai.

+1cc to M/s.Va.Vu.Si.Vazhkagam, Advocate sr.51296

CMA.No.977 of 2017 and
CMP.No.4857 of 2017

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ss(8/8/2017)



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