

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2017

DELIVERED ON : 13.10.2017

Coram:

The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice P.VELMURUGAN

C.M.A.Nos.2365 and 3287 of 2013

C.M.A.No.2365 of 2013

A Palanivel ..Appellant/Respondent/Respondent

..vs..

M. Manjula ..Respondent/Petitioner/Petitioner

C.M.A.No.3287 of 2013

M. Manjula ..Appellant/Petitioner/Petitioner

..vs..

A Palanivel @
Prakash Kumar ..Respondent/Respondent/Respondent

Civil Miscellaneous Appeal No.2365 of 2013 has been filed under Section 19 of the Family Court Act, to set aside the order dated 17.04.2013 passed in I.A.No.604 of 2011 in O.P.No.4017 of 2009 on the file of the III Additional Family Court, Chennai.

Civil Miscellaneous Appeal No.3287 of 2013 has been filed under Section 19 of the Family Court Act, against the order dated 17.04.2013 passed in I.A.No.604 of 2011 in O.P.No.4017 of 2009 on the file of the III Additional Family Court, Chennai, directing the respondent to pay Rs.10,000/- per month towards interim maintenance and Rs.3,000/- towards litigation expenses.

For Appellant in : Mr.D. Rajagopal
CMA No.2365/2013 &
For Respondent in
CMA No.3287/2013

For Respondent in : M/s. A. Arulmozhi
CMA No.2365/2013 &
For Appellant in
CMA No.3287/2013

COMMON JUDGMENT

(Judgment of the Court was delivered by P. VELMURUGAN,J.)

Petitioner/wife filed divorce petition against the Respondent/husband in O.P.No.4017 of 2009 before the learned III Additional Family Court at Chennai. During the pendency of the divorce petition, the wife filed an application in I.A.No.604 of 2011 for interim maintenance from the respondent/husband. After the enquiry, the learned III Additional Principal Judge, III Additional Family Court, Chennai, granted Rs.10,000/- per month as interim maintenance and Rs.3,000/- for litigation expenses. Aggrieved against the order, the respondent/ husband has preferred C.M.A. 2365 of 2013 to set aside the same. Similarly the petitioner/wife also filed C.M.A.No.3287 of 2013 for enhancement of the interim maintenance, stating that the interim alimony granted by the family court is not sufficient and the same has to be enhanced as prayed in the interlocutory application.

2. Since both the appeals are arising out of the order in I.A.No.604 of 2011, they have been taken up together and passed this common judgment. For the sake of convenience and also for easy reference, the status of the parties before the Family Court in the Interlocutory Application is taken in these appeals.

3. The case of the petitioner/wife is that she married the respondent on 21.5.2000. Out of their wedlock, one female child by name Sunanditha was born on 13.12.2000 and a male child by name Arunachalam was born on 26.06.2004. Both of them are under the care and custody of the petitioner. Since, the respondent/husband and his mother caused mental cruelty to the petitioner, she has filed petition for divorce on the ground of cruelty. During the pendency of the petition, she has filed an application in I.A.No.604 of 2011 for interim maintenance for herself and her two children. According to the petitioner, the respondent husband is having own houses and earning monthly rental income of Rs.40,000/-. The petitioner/wife is working in a private concern and earning Rs.10,000/- per month. From that amount she is not able to maintain herself and her two children both are studying in a private school. She has spent Rs.30,000/- for their school fees. She has to pay the future educational expenses, van fees, medical expenses, house rent, provision expenses etc., According to the petitioner, the respondent/husband is having own houses and receiving rental income of Rs.40,000/- per month. Hence, she filed the petition claiming interim maintenance of Rs.15,000/- for the children and Rs.20,000/- as litigation expenses.

4. The case of the respondent is that he is not earning monthly rental income of Rs.40,000/- as stated by the petitioner. He does not have any independent source of income. The properties are the joint family properties and out of joint family properties he is getting only a meager amount and further the petitioner has filed the divorce petition without any reason. She has not stated any specific incident of cruelty. The respondent filed petitions before the family court for custody and visitation right of the children. But the family court judge has not taken into consideration of the same and passed order only in the application for interim maintenance. The petitioner has not filed any evidence to prove that the respondent is earning Rs.40,000/- per month by way of rent. Further the petitioner has suppressed the fact that she is earning only Rs.10,000/- per month, actually she is earning Rs.30,000/- per month. So, despite having sufficient means to maintain herself and her minor children she has filed this petition and also denied the visitation rights of the children and therefore he is not liable to pay any interim maintenance.

5. After hearing both sides and considering the petition and counter filed by the respondent, the learned Family Court Judge has granted Rs.10,000/- as interim maintenance and also Rs.3000/- for litigation expenses. Aggrieved against the order, the Respondent/ husband has filed C.M.A.No.2385 of 2013 for setting aside the same and the petitioner/wife has filed C.M.A.No.3287 of 2013 to grant the interim alimony as prayed in I.A.No.604 of 2011.

6. Learned counsel for the Appellant/husband in C.M.A.No.2385 of 2013 would submit that the petitioner/wife herself admitted that she is employed and earning Rs.30,000/- per month. The learned counsel for the Appellant/husband further would submit that she has not filed any proof to show that the respondent/husband is earning income so as to pay a maintenance of Rs.10,000/ per month. The learned counsel also would submit that the Family Court has failed to note that there is no materials to show that the appellant/husband is owning houses and collecting rent and ordered the petition in favour of the petitioner/wife. The petitioner/wife is not entitled to any maintenance during the pendency of the divorce petition, since the respondent has not committed any act of guilty of desertion and cruelty or any of the acts mentioned in Section 18 of the Hindu Adoption and Maintenance Act. The learned counsel would further submit that the appellant/respondent has no immovable property on his name. Hence, the order of the trial court is liable be set aside.

7. The learned counsel for the Appellant/wife in C.M.A.No.3287 of 2013 would submit that after the marriage one female and one male children were born to them. The respondent/husband and his mother caused mental and physical

cruelty and that is the reason for separation between them. The learned counsel for the appellant/wife would further submit that the appellant at present is working in a private hospital and get a take home salary of Rs.14,000/- per month. The children are studying in 12th standard and 8th standard respectively. Her take home salary will not permit her to spend anything for the children's entertainment and nutritious food. The learned counsel would further submit that the respondent/husband is having rental income and he is doing money lending business. Taking advantage of her inability to get documentary proof of his income the respondent is trying to escape from obligation to pay interim maintenance.. The Petitioner/wife need atleast Rs.15,000/- more besides paying the school fee. The learned counsel would further submit that the monthly requirement of the petitioner and her children is more than Rs.30,000/- and therefore, he would submit that this Court has to enhance the interim maintenance as Rs.20,000/- besides paying the school fees and direct the respondent/husband to pay the arrears within a period specified by this Court.

8. Heard both sides and perused the petition filed by the petitioner/wife before the Family Court, Counter filed by the Respondent/husband, the order passed by the trial Judge, the grounds of appeals filed by both the parties and also the arguments put forth by both the learned counsel.

9. There is no dispute with reference to the marriage took place on 21.05.2000 and also out of their wed lock two children by names 1)Sunanditha and 2) Arunachalam were born. It is also not in dispute that the petitioner/wife has filed petition in O.P.No.4017 of 2009 before the learned III Additional Family Court, Chennai for dissolution of marriage and during the pendency of the said O.P., the petitioner/wife has filed I.A.No.604 of 2011 on the file of III Additional Family Court, Chennai for interim maintenance and the Family Court after hearing both parties granted a sum of Rs.10,000/- per month as interim maintenance and Rs.3,000/- as litigation expenses, considering the fact that the children are with the petitioner/wife and she alone meeting out the expenditure at home as well as educational expenses apart from transport and medical expenses.

10. The respondent denied all the allegations made against him by the petitioner. The respondent even now is ready to give consent for divorce, but he is ready to take up the custody of their two children and ready to give good education by admitting them in a good private school and also ready to provide all other facilities for the children. The respondent has also denied that the petitioner is earning only Rs.10,000/- per month. If it is so, she would have produced the proof to show that she is earning only Rs.10,000/- p.m. The petitioner has also not proved her stand that the respondent is having houses

in his own name and he also employed, by producing oral and documentary evidences that the property owned by him and earning sum of Rs.40,000/- per month. Without producing any documents, she has simply stated that the respondent gets Rs.40,000/- per month by way of rent from the property.

11. Considering the facts and circumstances of the case and also the fact that though the petitioner has not produced any document or salary slip to show the income proof of the respondent. In the matter like this, it is also the duty of the Court to decide from the available materials that what would be the monthly income of the respondent. It is not the case of the respondent/husband in this case that he has no income at all. He would state that he is having joint family properties out of which he is getting only meager amount, but he has not stated exactly what is the share amount he is getting from joint family properties. Further he would state that he is ready to take up the custody of the children and give good education by admitting them in a good private school and also ready to provide all other facilities for the children. Under the above said circumstances now the children are aged about 17 years and 13 years respectively. They have been growing up and certainly they require some monetary assistance to get good education and other facilities. Since, they are under the care and custody of the petitioner, though she is earning member through her earnings only, the children are being maintained. Though the respondent has stated that he is not earning Rs.40,000/- per month, at the same time he has not disclosed what is his actual monthly income. As discussed earlier he has got sufficient means and as a father of the children he is liable to maintain his children whatever be the reason and he cannot simply escape from legal as well as moral obligations for maintaining them.

12. The petitioner filed petition u/s 13(1)(a) and Section 25 of Hindu Marriage Act, 1955, in the year 2009 and she filed the application for interim maintenance u/s 24 of the Hindu Marriage Act, in the year 2011. The same was ordered on 17.4.2013 by the III Additional Family Court, Chennai, directing the respondent/husband to pay the interim maintenance from the dated of filing i.e., 29.11.2010. Against the said order, the present miscellaneous appeal in C..M.A.No.2365 of 2013 has been filed by the respondent and the same is pending from 19.6.2013. The petitioner/wife also filed C.M.A.3287 of 2013 to enhance the interim maintenance, which is also pending from 03.10.2013. According to the petitioner/wife, the respondent/husband has not complied with the order of the Family Court. The respondent/husband has also filed Interlocutory Applications before the Family Court for the custody and visitation of children, which are also pending before the learned III Additional Family Court.

13. Considering the facts and circumstances of the case and also the fact that the children are growing day by day, and also considering the cost of living and their educational expenditure such as school fee and other incidental educational expenses, the interim maintenance of Rs.10,000/- per month granted by the family court is certainly not sufficient. The wife has not proved the actual monthly income of the husband. Further, it is admitted fact that the wife is employed and husband has not proved the actual monthly income of the wife. However, the father has obligation to pay an interim maintenance for his children when they are not under the care and custody of the father. Considering all these facts and circumstances of the case, we are of the view that the interim maintenance granted by the III Additional Family Court as Rs.10,000/-per month is very meager and the same is not sufficient to maintain the children. Therefore, we are of the opinion that in the absence of specific proof for income of the husband and admission made by the husband that he is receiving meager amount from joint family properties and also considering the age of the children, cost of living, educational and other expenses. it would be appropriate to grant Rs.12,000/- per month as interim maintenance and Rs.5,000/- as litigation expenses. In view of the above, the Civil Miscellaneous Appeal filed by the respondent/husband is dismissed and the Civil Miscellaneous Appeal filed by the petitioner/wife is partly allowed. However, the wife and children are at liberty to workout their remedy before family court under Section 25 of Hindu Adoptions and Maintenance Act, 1956, by producing oral and documentary evidence for higher amount for maintenance.

14. In the result, C.M.A.No.2365 of 2013 is dismissed and the C.M.A.No.3287 of 2013 is partly allowed by enhancing the interim maintenance from Rs.10,000/- per month to Rs.12,000/- per month, from the date of filing of the petition before the Family Court, Chennai till the disposal of the main case and also enhancing the litigation expenses from Rs.3,000/- to Rs.5,000/-. The respondent/husband is directed to deposit the interim maintenance amount before the III Additional Family Court, Chennai, to the Credit of O.P.No.4017 of 2009 within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the petitioner/wife is directed to withdraw the same. The Respondent/husband is also directed to pay the interim maintenance amount on or before 5th of every English Calendar month without fail.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ggs

To

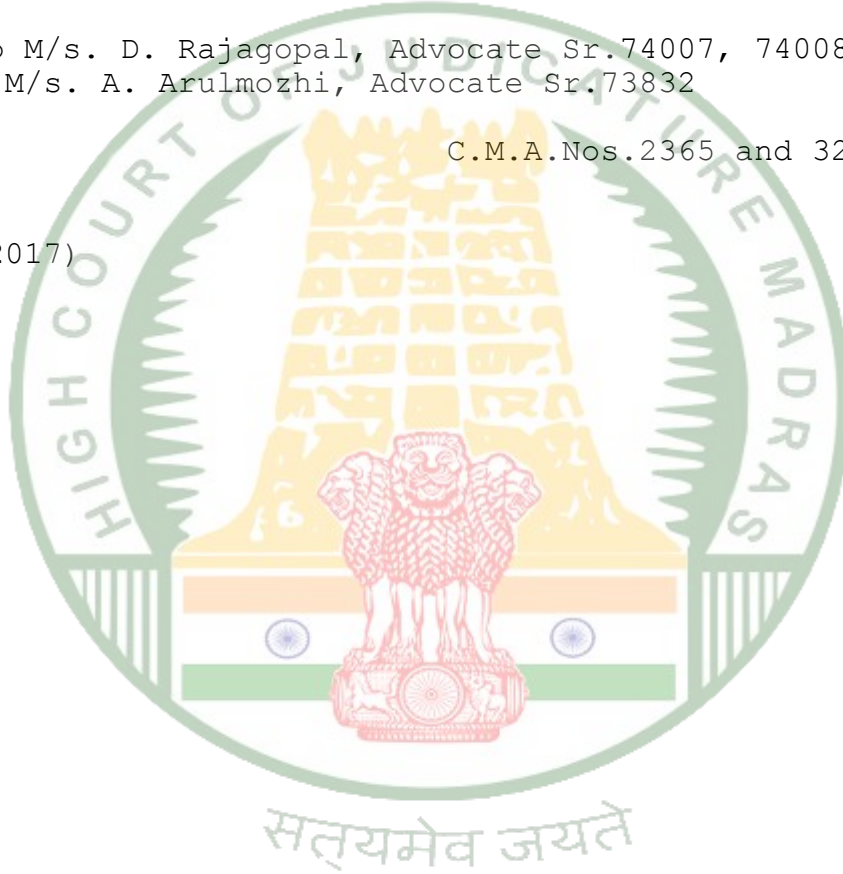
1. III Additional Principal Judge,
III Additional Family Court,
Chennai-600104.

2. The Section Officer, VR Section,
High Court, Madras. (2-copies)

+ 2 ccs to M/s. D. Rajagopal, Advocate Sr.74007, 74008
+ 1 cc to M/s. A. Arulmozhi, Advocate Sr.73832

C.M.A.Nos.2365 and 3287 of 2013

SS(CO)
EU(27/12/2017)



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