

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2017
Pronounced on : 19.06.2017

Coram :-

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

C.M.A.No.2585 of 2013

N.Murugan ... Appellant

vs.

1.D.Presenthi

2.M.P.Dharshan (Minor)

R2 is rep. by his mother &
natural guardian ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, against the order dated 05.03.2013 passed by the learned I Additional Principal Judge, Family Court, Chennai in I.A.No.2691 of 2011 in O.P.No.261 of 2011.

For Appellant : Mr.G.Anabayachozhan
For Respondents : Mr.A.Sikkandar

JUDGMENT

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

The present appeal is against the order dated 05.03.2013 passed by the learned I Additional Principal Judge, Family Court, Chennai in I.A.No.2691 of 2011 in O.P.No.261 of 2011.

2.The brief facts as set-forth in this appeal are as follows:

a)The appellant is the husband of the first respondent and father of the second respondent. The appellant's marriage was solemnized with the first respondent on 29.11.2007 as per Hindu Rites and Customs at Chennai and through the wedlock, the second respondent was born on 10.09.2008. Owing to certain misunderstanding between them, the appellant had filed a petition under Section 13(i-a) (i-b) of the Hindu Marriage Act, 1955 in O.P.No.261 of 2011 before the learned I Additional

Principal Judge, Family Court, Chennai seeking for dissolution of their marriage on the ground of desertion and cruelty.

b) Pending the original petition for divorce, the first respondent herein had filed an application in I.A.No.2691 of 2011 on 25.07.2011 under Section 24 of the Hindu Marriage Act, 1955 seeking for interim maintenance at the rate of Rs.5000/- per month for each of the respondents herein from the date of petition.

c) According to the first respondent/wife, the appellant/husband was working as a TV Mechanic and also doing Real Estate business and earning a sum of Rs.30,000/- per month. The first respondent also alleged that the appellant/husband has a rental income of Rs.3000/- per month out of his house situated at 70, Labour Colony, Guindy, Chennai.

d) According to the first respondent/wife, she is now under the custody of her father and since she has no independent income of her own has filed the application for maintenance. The appellant/husband had filed the counter affidavit denying the income projected by his wife.

e) After consideration of the various grounds raised by each of the parties, the learned I Additional Principal Judge, Family Court, Chennai has passed an order on 05.03.2013, partly allowing the first respondent/wife's interlocutory application seeking for maintenance by directing the appellant/husband to pay a sum of Rs.3000/- per month to each of the respondents herein towards interim maintenance from 25.07.2011 onwards.

3. Aggrieved against the same, the present appeal has been filed by the appellant/husband.

4. Heard Mr.G.Anabayachozhan, learned counsel for the appellant as well as Mr.A.Sikkandar, learned counsel for the respondents.

5. The learned counsel for the appellant submitted that the appellant did not have sufficient income to support the respondents herein and as a TV Mechanic, he was earning a sum of Rs.3500/- alone as monthly income. The appellant had also relied upon an Income Certificate issued by the Tahsildar, Mambalam-Guindy Taluk, Chennai to the effect that he is earning a sum of Rs.42,000/- per annum which was not considered by the learned I Additional Principal Judge, Family Court, Chennai.

6. The learned counsel for the appellant further submitted that the learned I Additional Principal Judge, Family Court, Chennai, had not taken cognizance of the averment made by the appellant in his counter affidavit wherein he has stated that

the first respondent herein was employed as a teacher in a private school and also carrying on a sole proprietrix business under the name of "New Creation Training Centre" at Mangadu, Chennai.

7.Per contra, the learned counsel for the respondents submitted that the appellant was actively involved in Real Estate business apart from being a TV Mechanic and that he had sufficient means to pay the interim maintenance and therefore, prays for dismissal of the appeal.

8.We have carefully considered the submissions made on behalf of the respective counsels and also perused all the documents filed in support of the above appeal.

9.On a perusal of the interim order passed by the learned I Additional Principal Judge, Family Court, Chennai in I.A.No.2691 of 2011 dated 05.03.2013, it is seen that the marriage between the appellant and the first respondent is not under dispute. The Family Court had proceeded on the basis that the appellant had not denied the fact that he was gainfully employed as a TV Mechanic. The only ground raised by the appellant is that his income was only Rs.3500/- per month and therefore, he had no sufficient means to pay the maintenance to the respondents herein, which submission is based on the income certificate produced by him. So far as the appellant's income is concerned, we are unable to appreciate the Income Certificate dated 10.04.2012 produced by him from the Tahsildar, Mambalam-Guindy Taluk, Chennai, as the income stated therein does not disclose that it is the result of an investigation/proceedings conducted by the authority. Hence, the said certificate cannot be taken to be a conclusive proof of the appellant's income for determining monthly maintenance. Furthermore, the amount of Rs.3000/- for each of the respondents herein cannot be said to be an unreasonable amount taking into account the present living standards to meet the requirements for a normal human being.

10.The submission of the learned counsel for the appellant that the first respondent is gainfully employed as a teacher at St. Anns Matriculation School, Mangadu, Chennai and that she is also running a proprietrix firm in the name of New Creation Training Centre, Mangadu, Chennai is not supported by any documents. Accordingly, we can only conclude that the appellant has miserably failed to prove that the first respondent had sufficient means to support herself and her child.

11.In the result, we do not find any merits in the grounds raised by the appellant in the present appeal. Accordingly, the interim order dated 05.03.2013 passed by the learned I Additional Principal Judge, Family Court, Chennai in

I.A.No.2691 of 2011 in O.P.No.261 of 2011 is confirmed.
Consequently, the Civil Miscellaneous Appeal stands dismissed.
There shall be no orders as to costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

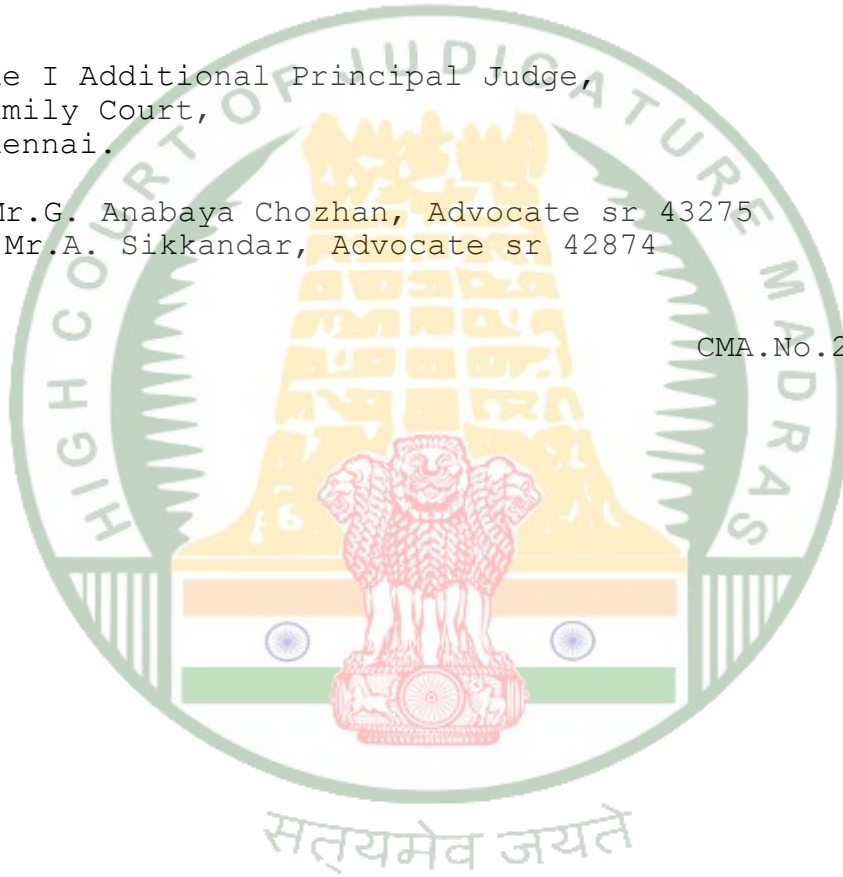
To

The I Additional Principal Judge,
Family Court,
Chennai.

+1 CC to Mr.G. Anabaya Chozhan, Advocate sr 43275
+2 Ccs to Mr.A. Sikkandar, Advocate sr 42874

CMA.No.2585 of 2013

SS (CO)
sp/28/6



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