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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

C.M.A.(MD)No.397 of 2017
and
C.M.P(MD)No.4307 of 2017

N.Ekanthalingam : Appellant/Respondent

Vs.

R.Santhanalakshmi : Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the order pertaining to the maintenance alone in the judgement and decretal order passed in H.M.O.P.No.186 of 2016, dated 25.01.2017, on the file of Family Court, Tirunelveli.

For Appellant : Mr.K.Rajeshwaran
For Respondent : No appearance

JUDGMENT

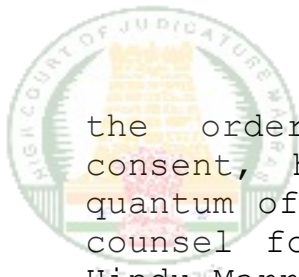
[Judgment of the Court was made by M.M.SUNDRESH, J.]

This appeal is directed against the portion of the order by which the Court below while granting a decree of divorce, incidentally, directed the appellant to pay a sum of Rs.15,000/- by way of maintenance.

2.The learned counsel for the appellant would submit that there was no application made. Therefore the appellant is not in a position to let in evidence. Therefore the order passed by the court below requires interference by this Court.

3.Despite, notice having been served, none appears on behalf of the respondent.

4.A perusal of Section 25 of the Hindu Marriage Act would show that in a given case, grant of maintenance to a party, while disposing of the main petition, even in the absence of a separate application can be done. In other words, it is part of an order passed on the main petition by exercising the discretion. Therefore in such a view, this Court does not find any error in



the order passed. The Court below has passed the order more by consent, however exercised its discretion with respect to the quantum of maintenance. Hence the contention raised by the learned counsel for the appellant on the basis of Section 25 of the Hindu Marriage Act, is rejected.

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5.The other contention raised by the learned counsel for the appellant requires consideration. It is submitted that the appellant was not in a position to let in evidence with respect to his means. It is not a case, in which, the appellant can deny the maintenance payable to the respondent and the child, but it is one of fixing the quantum.

6.Therefore, considering the above, we are of the view that it is a fit case where the appellant can be given liberty to approach the Family Court seeking to vary or modification of the order. Such an application is to be filed by the appellant within a period of four weeks from the date of receipt of a copy of this order. Inasmuch as the appellant has contended before us that he does not have sufficient means, we are of the view that the case would come under Section 25(2) of the Hindu Marriage Act. Therefore the application to be made by the appellant will have to be decided on its own merits, without dismissing on the ground of maintainability. The Civil Miscellaneous Appeal stands ordered accordingly. In the meanwhile, the respondent/wife is permitted to withdraw the maintenance amount deposited as per the order of this Court, without prejudice to the contention of the application to be filed by the appellant/husband. The appellant shall also pay a sum of Rs.10,000/- p.m as maintenance to the respondent and her child till the disposal of the application, which can be apportioned at Rs.5000/- each for the respondent and child. The Court below is also directed to pass orders on the application to be filed by the appellant, without being influenced by any of the observations made herein, with a direction to pay maintenance at Rs.10,000/- p.m. to the respondent and her child, which is only an interim arrangement. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub-Assistant Registrar

To

The Judge, Family Court, Tirunelveli.

+One cc to Mr.K.Rajeshwaran, Advocate, SR.No.74041

vsn

RL/3C/2P/KP/SAR1/13/9/2017

JUDGMENT MADE IN
C.M.A. (MD) No.397 of 2017
and
C.M.P (MD) No.4307 of 2017
21.08.2017