



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twenty First day of November Two Thousand Seventeen

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PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.6862 of 2017

IN

CMSA(MD) No.18 of 2014

G.GANDHIMATHI

... PETITIONER/RESPONDENT

Vs

A.GNANASUNDARAM

... RESPONDENT/APPELLANT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of direction, directing the Respondent to pay a sum of Rs.15,000/- by way of monthly maintenance and also a sum of Rs.2,00,000/- towards medical expenses incurred for surgery and consequential treatments.

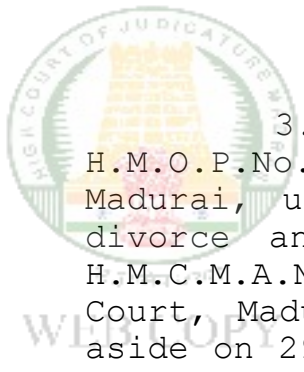
Prayer in CMSA(MD). 18/ 2014 :

To set aside the judgment and decree dated 29.08.2011 made in HMCMA.No.2/2010 on the file of the 1st ADJ, Madurai reversing the order passed in HMOP.No.2/1998 on the file of the III Additional Sub Judge, Madurai dated 21.01.2009 and allow this CMSA and thus render justice.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.V.SITHARANJANDAS, Advocate for the petitioner and of Mr.V.VENKATASAMY, Advocate for the Respondent, the court made the following order:-

This Civil Miscellaneous Petition has been filed directing the respondent/husband to pay a sum of Rs.15,000/- by way of monthly maintenance and also a sum of Rs.2,00,000/- towards medical expenses incurred for surgery and consequential treatments.

2. The petitioner/wife would aver among other things that the petitioner herein is the wife of the respondent herein and the marriage between them was solemnized on 15.03.1984 and out of their wedlock, two children were born to them and it is alleged by the petitioner/wife that she was driven away from the matrimonial house in the year 1992.



3. While the matter stood thus, the respondent herein filed H.M.O.P.No.2 of 1998 on the file of the III Additional Sub-Court, Madurai, under Section 13(i)(a)(b) of the Hindu Marriage Act for divorce and the same was decreed on 21.01.2009. On appeal in H.M.C.M.A.No.2 of 2010 on the file of the I Additional District Court, Madurai, the decree of divorce granted in H.M.O.P. was set aside on 29.08.2011. Aggrieved over the same, the respondent herein filed the above miscellaneous second appeal.

4. It is further averred in the miscellaneous petition that since 1992 onwards, the petitioner is under the care and custody of her parents. According to the petitioner, the respondent is paying a sum of Rs.4,000/- towards maintenance which is not sufficient to lead even for normal life. While so, the petitioner is suffering with CA(LT) Breast with Axillary Lymphnode and the petitioner underwent so many treatments including surgery by which she had incurred more than two lakhs rupees and advised to undergo electro therapy. It is further averred in the affidavit filed in support of the petition that the petitioner met the medical expenses by selling away the jewels and borrowing money for interest from the third parties. In support of the same, the petitioner produced the discharge summaries dated 09.06.2017 and 07.07.2017 issued by Shenbagam Hospital, Madurai. In the above background, this petition has been filed praying for the relief stated supra.

5. The learned counsel appearing for the respondent/husband through his counter affidavit would aver that the petitioner/wife voluntarily left the matrimonial home leaving two tender aged children wayback in the year 1992. He would further aver that the respondent/husband brought up the two children by giving them good education and also had settled them by performing their marriage. At present, the son is living separately with his family. For the last 25 years, the respondent/husband is away from the petitioner/wife and as per the order of the Court below, respondent/husband has been paying a sum of Rs.4,000/- per month since 1992 onwards without any default. Presently, the respondent/husband receives only pension amount of Rs.27,000/- and after paying the maintenance amount, the remaining amount is spent for food, clothing, shelter and medical expenses. He further aver that the respondent/husband underwent a surgery in the right ear and a sum of Rs.1,50,000/- was incurred and in addition to which, he suffers glaucoma and spend Rs.1,000/- per month towards treatment in Aravind Eye Hospital including transportation and Rs.3,000/- towards medicines.

6. Apart from that, it is further contended by the respondent/husband that he is helping his son-in-law who had incurred heavy loss in the a driving school owned by him. Added further, he borrowed Rs.3,00,000/- to help his son-in-law and paying Rs.4,500/- per month as interest for the said loan. It is further stated that respondent/husband is taking care of his sister, who is a widow, aged 73 years and also contended that the petitioner/wife is a rich lady hailing from a rich family and she got capacity to



look after herself. To sum up, he would state that the present petition has been filed just to harass him. Hence, he prays for the dismissal of this petition.

7. Heard the learned counsel appearing for the respective parties and perused the materials available on record.

8. The only question to be decided in this civil miscellaneous petition is that though the divorced wife receives maintenance from her husband, whether, she is entitled to claim medical allowance also from her husband?

9. At the outset, it is to be pointed out that the maintenance amount is paid to the wife/husband only to take care of their day-to-day life. Once the maintenance amount is paid by the husband to her wife, as the case may be, it should not to be construed that the relationship between the husband and wife severed at the gross root level. The relationship subsists continuously, though, they are physically away from each other. Therefore, there may not be any quarrel that once the Court is satisfied that the wife is in need of medical or any other emergencies, the divorced wife is also entitled to claim medical expenses from her husband, according to the facts and circumstances of the case.

10. However, it is a peculiar case, where petitioner/wife has been separated from her husband for nearly more than two decades, namely, since 1992 onwards. There has been no cohabitation or any attempt on the part of the petitioner/wife to unite with her husband. Admittedly, the care and custody of the children were with the respondent/husband. The respondent/husband, as a dutiful father, brought up the children and they were given proper education and the marriages were also performed. The conduct of the respondent/husband has to be taken note of in this case that the respondent/husband has been continuously paying maintenance without any default for more than 25 years. He is also spending huge amount to his medical expenses also. In addition to which, the respondent/husband takes care of her sister, who is also taking medical treatment, aged about 73 years. Though the petitioner/wife left him, without going for a second marriage, he completely dedicated himself for his family alone and lived as a good father to the children and meeting out the needs of them. All this is being done only with his passion. Therefore, this Court is of the considered view that the respondent/husband cannot be burdened more and more by imposing financial constraints on him.

11. In the day-to-day affairs, diseases are unpredictable. Admittedly, in the case on hand, the petitioner suffers from cancer which is quite evidenced from the medical records produced before this Court. But in the present circumstances of the case, this Court cannot burden the respondent/husband with more liabilities.



12. Keeping in mind the escalation of prices coupled with the fact that the petitioner suffers from cancer, which is evidenced by medical records, this Court feels that ends of justice would be met by increasing the monthly maintenance from Rs.4,000/- to Rs.5,000/- so as to enable the petitioner/wife to take care of herself till the main Civil Miscellaneous Appeal is disposed of. Such amount shall be paid to the petitioner/wife from the month of November 2017 regularly till the main appeal is disposed of.

13. In the result, this Civil Miscellaneous Petition is disposed of to the extent indicated above. No costs.

sd/-
21/11/2017

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE I ADDITIONAL DISTRICT JUDGE
MADURAI

2 THE III ADDITIONAL SUBORDINATE JUDGE
MADURAI.

+1. C.C. to M/S.V.SITHARANJANDAS Advocate SR.No.34806

ORDER
IN
CMP (MD) No.6862 of 2017
IN
CMSA (MD) No.18 of 2014
Date :21/11/2017

ssm
SH/CM-VR/SAR-4:23.11.2017:4p/4c