

In the High Court of Judicature at Madras

Dated : 27.04.2018

Coram

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

C.M.A.No.1033 of 2018
and
CMP.No.8354 of 2018

M.Murugan

..Appellant/Respondent/ Respondent

vs

S.Sharmila

..Respondent/Petitioner/ Petitioner

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the order dated 12.08.2014 passed in I.A.No.795 of 2014 in O.P.No.469 of 2013 on the file of the I Additional Principal Family Court, Chennai.

For Appellant : Mr.V.Udayakumar

For Respondent : Mrs.M.Christella

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

This Civil Miscellaneous Appeal is preferred by the appellant-husband calling in question the legality and validity of the order dated 12.08.2014, passed by the I Additional Principal Family Court, Chennai in I.A.No.795 of 2014 in OP.No.469 of 2013.

2.By the order impugned herein, the I Additional Principal Family Court, Chennai, partly allowed the aforesaid application filed by the respondent-wife under Section 24 of the Hindu Marriage Act (for brevity "the Act"), directing the appellant-husband to pay a sum of Rs.3,000/- per month towards interim

maintenance from the date of the application and continue to pay the same on or before 5th of every English calendar month and pay the arrears immediately.

3.The schema of the facts relevant for the disposal of this appeal, as emerging from the materials on record, is as follows:

3.1 The marriage between the appellant - husband and the respondent - wife was solemnized on 18.11.2010 at Kokalai Village, Thiruchengode Taluk, Namakkal District, as per the Hindu rites and customs.

3.2 As their marriage ran into rough weather, the appellant - husband has filed OP No.56 of 2012 before the Sub Court, Rasipuram under Section 13 (1) (i-a) of the Act for dissolution of the marriage, whereas, the respondent - wife has filed OP.No.469 of 2013 under Section 9 of the Act seeking restitution of conjugal rights.

3.3 Pending the aforesaid petition, the respondent - wife has filed an application in I.A.No.795 of 2014 in OP.No.469 of 2013 seeking interim maintenance at the rate of Rs.10,000/- per month, stating that she is unemployed and with no means to eke out her livelihood as the appellant - husband has discarded her without any rhyme or reason; and she is solely depending on her aged father, who himself finds it difficult to maintain his family. According to her, the appellant - husband is a graduate and has completed his teacher training course; he is employed in a company and also a part-time LIC agent, through which, he is earning a sum of Rs.25,000/- per month.

3.4 Repudiating the allegations raised in the aforesaid application, the appellant - husband has filed a counter affidavit, stating that he is working as a LIC agent on commission basis and earning a paltry sum of Rs.4,000/- to Rs.5,000/- on an average every month, which is not sufficient enough to maintain himself as well as his aged mother. According to him, the respondent - wife is immatured and she was affected by polio during her childhood, due to which, her leg and eye sight are partially affected and hence, she is physically unfit for marital life; and the said fact was suppressed by the family of the respondent - wife at the time of marriage.

3.5 By order dated 12.08.2014, the Family Court, upon appreciation of the rival contentions, concluded that the appellant - husband is duty bound to maintain his legally wedded wife and accordingly, directed him to pay a sum of Rs.3,000/- per month towards interim maintenance to the respondent / wife. Aggrieved over the same, the appellant - husband has come up with the present appeal.

4.This Court considered the submissions made by the learned counsel on either side and perused the materials placed on record.

5.There is no dispute with regard to solemnization of the marriage between the parties on 18.11.2010. During the course of matrimonial life, dispute arose between the parties, due to which, the appellant - husband has filed OP.No.56/2012 seeking divorce. On the other hand, the respondent-wife has filed OP.No.469 of 2013 seeking restitution of conjugal rights and both the petitions are pending. In such circumstances, the respondent - wife filed I.A.No.795 of 2014 seeking interim maintenance, which was allowed, directing the appellant - husband to pay a sum of Rs.3,000/- per month to the respondent - wife, by order dated 12.08.2014, which is impugned in this appeal.

6.It is the specific case of the appellant - husband that he is earning only pittance, by working as a LIC agent on commission basis, which is not sufficient for him to maintain himself as well as his aged mother, whereas the stand of the respondent - wife is that after being sent out of the house by the appellant - husband, she has to perforce take refuge in her parental home and she has no source of income of her own and is fully dependent on her father.

7.Be it noted that the obligation of the appellant - husband to maintain the respondent - wife during the pendency of the petition, is not only legal, but also moral, more particularly, when it is not the case of the appellant - husband that the respondent - wife is employed and earning some amount. Further, the object of Section 24 of the Act is not to elevate the status or standard of the respondent - wife on par with the appellant - husband, but is to ensure that adequate financial support is extended to the respondent - wife, when there is no independent income to maintain herself during the pendency of matrimonial proceedings.

8.In such perspective of the matter, we do not find any infirmity or illegality, warranting interference with the order passed by the Family Court in awarding interim maintenance to the respondent / wife at Rs.3,000/- per month, which cannot be, by any stretch of imagination, said to be excessive and exorbitant, taking note of the present cost of living index.

9.As a sequitur, this Civil Miscellaneous Appeal stands dismissed. The time for payment of arrears of interim maintenance is one month from the date of receipt of a copy of

this judgment. The I Additional Principal Family Court, Chennai is directed to dispose of OP No.469 of 2013 on merits and as per law, within a period of six months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The I Additional Principal Family Court, Chennai.

Copy to.

The Section Officer,
VR.Section, High Court, Madras

C.M.A.No.1033 of 2018

GJ(CO)
GSP(18/09/2018)



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