

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.06.2018

Pronounced on : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No.1226 of 2018

and

CMP.No.9963 of 2018

D.Madhan

.... Appellant/Petitioner

Vs.

J.Sujatha

.... Respondent/Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984 to set aside the fair order and decretal order dated 14.02.2018 made in I.A.No.2222 of 2017 in O.P.No.3483 of 2015 on the file of the learned IV Additional Judge, Family Court, Chennai.

For Appellant : M/s.C.Prakasam

For Respondent : M/s.K.Sumathi

J U D G M E N T

C.SARAVANAN

The present appeal has been directed against fair and decretal order dated 14.02.2018 passed by the learned IV Additional Judge, Family Court, Chennai in I.A.No.2222 of 2017 in H.M.O.P.No.3483 of 2015 (for brevity referred to as the Family Court and the impugned order respectively).

2. The appellant-husband herein filed H.M.O.P.No.3483 of 2015 before the Family Court to dissolve the marriage solemnized with the respondent-wife under Section 13(1)(i-a) of the Hindu Marriage Act, 1988.

3. In the aforesaid proceeding, the respondent-wife filed I.A.No.2222 of 2017 to direct the appellant-husband herein to pay a sum of Rs.20,000/- as interim maintenance per month for their child and a sum of Rs.61,160/- per annum towards annual school fees for their child and a sum of Rs.50,000/- towards as litigation expenses.

4. The Family Court has partly allowed the relief in favour of the respondent-wife in I.A.No.2222 of 2017 with a direction to the appellant- husband to pay a sum of Rs.9,000/-p.m. towards interim maintenance of their child from the date of the petition and a sum of Rs.40,000/- p.a.towards annual school fees and a sum of Rs.50,000/- towards litigation expenses.

5. As per the impugned order, the aforesaid interim maintenance of Rs.9,000/- is payable on or before the 5th day of every English Calendar Month from the date of petition to the respondent-wife.

6. Aggrieved by the said order, the appellant-husband has filed the present Civil Miscellaneous Appeal before this Court.

7. During the course of hearing, the learned counsel for the appellant- husband would submit that the appellant-husband was willing to pay a sum of Rs.1,21,000/- towards arrears of interim maintenance of the child i.e. Rs.9,000/- X 9 = Rs.81,000/- and Rs.40,000/- towards school fee alone.

8. In the grounds of appeal, the appellant-husband has objected to the litigation expenses awarded to the respondent-wife, considering the fact that she was employed and earning .

9. At the same time, the learned Counsel for the appellant-husband has also filed a Memo of Calculation and submitted that the appellant-husband is obliged to pay only Rs.60,500/- i.e. 50% of Rs.1,21,000/- and would therefore seeks interference from this Court.

10. The learned counsel for the respondent-wife has defended the order and submits that the amount awarded by the Family Court in respect of the litigation expenses is also just and

fair.

11. After correctly arriving at the arrears payable in the Memo of Calculation filed at the time of hearing, the appellant-husband wants to restrict the same to Rs.60,500/- being 50% of the aforesaid amount of Rs.1,21,000/- in the same Memo of Calculation and under takes to pay the same while challenging the litigation expenses awarded.

12. Consolidated amount towards monthly maintenance for 9 months and the annual school fees is Rs.1,96,160/-[61,160 +1,35,000] ie. Rs.61,160/- towards Annual School Fees and Rs.1,35,000/- (Rs. 15,000/- x 9) towards 9 months for the monthly maintenance.

13. The aforesaid amount of Rs.1,96,160/- has been rounded off to Rs.1,95,000/-. The husband is in arrears of Rs.1,21,000/- as on the date of hearing of the Appeal even as per the amount determined in the Memo of Calculation filed on behalf of the husband.

14. In other words, out of consolidated amount Rs.1,95,000/-, the appellant-husband wants the respondent-wife bear Rs.1,24,500/- even though, he earns more than respondent-wife.

15. Considering the rival submissions, we are of the view that the amount of Rs.9,000/- p.m. awarded towards interim maintenance of the child and Rs.40,000/- towards annual school fees of the child cannot be interfered.

16. The learned Judge of the Family Court in para Nos.8 and 9 of the impugned order, has applied his mind and assessed the amount to be borne between the parties in the ratio of 60:40 respectively based on the income earned by each of them.

17. The Learned Judge has arrived at a figure of Rs.15,000/- as the monthly expenditure for bringing up a child in a city like Chennai. This determination has not been questioned by the appellant-husband in the Appeal.

18. Learned Judge has apportioned the aforesaid amount payment in proportion with the income of the respective parties. Therefore, the appellant-husband has been asked to bear a sum of Rs.9,000/-p.m. while the respondent-wife has been asked to bear the sum of Rs.6,000/-p.m.

19. Thus, the appellant-husband is in arrears for nine months as on the date of hearing and is liable to pay Rs.81,000/-. This amount cannot be reduced by 50% based on the Memo of Calculation filed by on behalf of the appellant-husband.

20. Similarly, the appellant-husband is in arrears of Rs.40,000/- towards annual school fee based on the determination arrived by the Family Court. Therefore, there is no rationale to further restrict the aforesaid arrears to 50% and transfer the additional burden to the respondent-wife.

21. Similarly, the appellant-husband has not questioned the annual school fees of Rs.61,160/-. The appellant-husband has been asked to bear only a sum of Rs.40,000/- p.a. While the respondent-wife has been asked to bear Rs.20,000/- p.a. towards annual school in the same proportion. This amount cannot be reduced by 50% based on the Memo of Calculation filed by on behalf of the appellant-husband.

22. Thus, the husband has to pay a sum of Rs.1,21,000/- (Rs.81,000/- + Rs.40,000/-) as arrears as per the Memo of Calculation filed on behalf of the appellant-husband.

23. The undertaking in the Memo of Calculation to restrict the amount to Rs.60,500/- is therefore not accepted. We are therefore not interfering with the fair and decretal order of the Family Court as far as these two items are concerned.

24. The appellant-husband shall therefore pay the arrears of Rs.1,21,000/- to the respondent wife as determined in the Memo of Calculation filed on behalf of the appellant-husband.

25. As far as, the objection regarding the litigation expenses to the respondent-wife is concerned we are convinced there is a case for modification.

26. The counsel for the respondent-wife would state that the appellant-husband is responsible for driving the respondent-wife to multiple-litigation and therefore the amount awarded is just and fair.

27. Though it was stated that the respondent- wife is from a well to do family and has been earning a sum of Rs.55,000/- p.m. at the time of hearing of the present appeal, we will confine to the amount as on record before the Family Court. The respondent-wife was earning Rs.25,000/- at the time when the case was filed before the Family Court.

28. We are of the view that a sum of Rs.50,000/- awarded towards litigation expenses to the wife appears to be slightly on the higher side. Considering the fact that the respondent-wife is also employed and was admittedly drawing a sum of Rs.25,000/- p.m. as salary at the time of disposal of the above petition before the Family Court, we are inclined to partially modify the amount awarded towards litigation expenses by restricting it to Rs.35,000/-. Therefore, the impugned order is partially modified and ordered as follows:

a. The Appellant-husband is directed to pay a sum of Rs.1,65,000/- (i.e.Rs.81,000/- + Rs.40,000/- + Rs.35,000/- = Rs.1,56,000/- + arrears of Rs.9,000/- for the month of July 2018) forthwith to the respondent-wife towards arrears of interim maintenance, annual school fees for the child and litigation expenses.

b.The order contained herein shall be complied scrupulously without delay and in any event within two weeks from today.

c. The appellant-husband shall continue to pay the monthly maintenance and annual school fee for the succeeding period as per the order of the Family Court.

C.The learned Principal Judge, Family Court,
Chennai, is directed to dispose
H.M.O.P.No.3483 of 2015 on merits on or before
31st January 2019.

29. The Civil Miscellaneous Appeal is partly allowed with
the above direction. No cost. Consequently, connected
miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

kkd

To

The IV Additional Judge, Family Court,
Chennai.

+1 CC to Ms.S. Sumathi, Advocate sr 45274.

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and CMP.No.9963 of 2018

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KGK (CO)

SP(06/08/2018)

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