

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1437 of 2016
& CMP No.11049 of 2016

N.Muthusamy ... Appellant/Respondent

Vs

R.Bhuvaneswari ... Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal filed against the judgment and decree dated 08.06.2015, passed by the Family Court, Erode, in H.M.O.P.No.42 of 2014.

For Appellant :Mr.R.Jayaprakash for
Mr.M.Guruprasad

For Respondent :Mr.T.S.N.Prabhakaran

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Civil Miscellaneous Appeal has been directed against the order dated 08.06.2015, passed in H.M.O.P.No.42 of 2014, by the Family Court, Erode.

2.The respondent herein, as petitioner, has filed H.M.O.P.No.42 of 2014, on the file of the trial Court under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, praying to dissolve the marriage between her and the respondent held on 12.12.1994.

3.It is averred in the petition that the respondent has got married the petitioner on 12.12.1994, as per Hindu Rites and Custom. After marriage, both of them have lived as husband and

wife in the house of the respondent. The petitioner has worked in a tailoring shop run by the respondent. After sometime, the petitioner has become pregnant. The respondent has gone to Erode for doing work of cutting master. After sometime, there is a considerable change in the conduct of the respondent. The respondent has not allowed the petitioner to visit her parental home. The petitioner has given birth to a child on 03.11.1995 and subsequently, both the petitioner and respondent have shifted their residence to Erode. The respondent has not treated the petitioner properly. The petitioner has brought her younger sister so as to attend house-hold works. But, the respondent has insulted her. Since the respondent has caused cruelty to the petitioner, a police complaint has also been given on 30.06.2004. The respondent has demanded a sum of Rs.70,000/- from the sister of the petitioner. The respondent has driven the petitioner from marital abode and even he has not permitted her to see the child. Since the respondent has caused cruelty to the petitioner, the present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, the relationship between the parties and also birth of child are admitted. The remaining allegations made against the respondent are specifically denied and ultimately prayed to dismiss the petition.

5. On the basis of the available evidence on record, the trial Court has dismissed the relief of divorce and granted a permanent alimony of Rs.3000/- per mensem, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant/respondent has contended to the effect that the quantum of monthly maintenance awarded by the trial Court is excessive and the appellant/respondent is not having sufficient source of income so as to pay the quantum fixed by the trial Court. Under the said circumstances, some modification may be given.

7. Per contra, the learned counsel appearing for the respondent/petitioner has contended to the effect that the son of the respondent/petitioner is aged 21 years and now he is studying in a college and also under the care and custody of the respondent/petitioner and considering the overall circumstances available on record, the trial Court has rightly directed the appellant/respondent to pay monthly maintenance of Rs.3000/- by way of passing the impugned order and the same does not suffer from any infirmity nor illegality and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

8.In fact, this Court has perused the entire order passed by the trial Court. The trial Court has ultimately found that there is no fault on the part of the respondent. However, the trial Court has granted a permanent alimony to the tune of Rs.3000/- per mensem.

9.The only gravamen expressed on the side of the appellant/respondent is that he is not in a position to pay monthly maintenance of Rs.3000/- to the respondent/petitioner.

10.Considering the fact that the son of both the appellant and respondent is now under the care and custody of the respondent/petitioner and also considering the quantum of amount fixed by the trial Court, this Court is of the view that the quantum fixed by the trial Court is too meager and in fact, the same would not be sufficient to meet out the barest needs of both the respondent/petitioner and her son and therefore, the order passed by the trial Court does not suffer from any infirmity and altogether, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with costs. The order passed in H.M.O.P.No.42 of 2014 is confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

msk

To
The Judge,
The Family Court,
Erode.

+1cc to Mr.M.GURUPRASAD, Advocate, S.R.No. 7261
+1cc to Mr.T.S.N.PRABHAKARAN, Advocate, S.R.No. 6312

C.M.A.No.1437 of 2016

NRJK (CO)
TR(26/02/2018)