

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-04-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 47 of 2016

Viswanathan .. Appellant

Versus

J. Padmavathy .. Respondent

Appeal filed under Order Section 19 of the Family Court Act against the Order dated 31.07.2015 made in I.A. No. 57 of 2015 in HMOP No. 69 of 2014 on the file of Family Court, Nilgiris at Udhagamandalam

For Appellant : Mr. Lenin for M/s. Lenin & Bagya
For Respondent : Mr. S. Makesh

JUDGMENT

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

The appellant/husband has filed this appeal questioning the correctness of the order dated 31.07.2015 passed by the Family Court, The Nilgiris @ Udhagamandalam in IA No. 57 of 2015 in HMOP No. 69 of 2014. By the said order dated 31.07.2015, the Family Court partly allowed the application filed by the wife/respondent and directed the appellant to pay a sum of Rs.3,000/- per month as interim maintenance together with a sum of Rs.5,000/- towards litigation expenses.

2. As per the averments in HMOP No. 69 of 2014 filed by the appellant, it could be seen that the marriage between the appellant and the respondent was solemnised on 29.01.2012 at the residence of the appellant at Kallakorai Village as per Hindu rites and customs. According to the appellant, within 3 days of the marriage, the appellant and respondent came down to Chennai where the appellant was employed. It is the contention of the appellant that the respondent avoided and evaded to have sexual intercourse with him for the reasons best known to her. When the appellant caused enquiries in this regard, he came to know that the respondent did not even attain puberty and she is unfit for marital life. It is the specific contention of the appellant that the respondent and her parents have suppressed the above said facts and performed the marriage and thereby he was cheated. According to the appellant, the respondent, when questioned about her physical condition, deserted his matrimonial company and stayed in her parents house. While

staying at her parents house, the respondent had sent a notice dated 12.09.2013 containing false and untenable averments. The appellant was therefore constrained to issue a reply notice dated 20.09.2013 repudiating the averments made in the notice dated 12.09.2013. Thereafter, the appellant has filed the present petition under Section 11 of The Hindu Marriage Act for a declaration to declare that the marriage solemnised between the appellant and the respondent on 29.01.2012 is null and void.

3. On notice, the respondent has filed I.A. No. 57 of 2015 contending that she did not desert the matrimonial company of the appellant on her own and that she was asked to stay in her parents house for some time by none else the appellant. It was further stated that she is residing along with her mother and brothers and she has no independent source of income or wherewithal to maintain herself. It was also stated that the appellant was employed in Madras Port Trust at the time of marriage and he was in receipt of more than Rs.30,000/- as salary per month. In such circumstances, the respondent has filed the I.A. No. 57 of 2015 seeking to direct the appellant to pay maintenance to her at the rate of Rs.5,000/- per month and another sum of Rs.10,000/- towards litigation expenses.

4. The Interim application was resisted by the appellant contending that the marriage was solemnised by suppressing the fact that the respondent did not attain puberty and she is not capable of leading a normal marital life. As the marriage was solemnised by resorting to fraud and suppression of physical condition of the respondent, the marriage itself has become null and void. The appellant retired from service and maintaining himself and his two children born to his first wife with the meagre pension amount. In such circumstances, the appellant prayed for dismissal of the application for interim maintenance filed by the respondent.

5. Before the Family Court, the appellant and the respondent did not let in any oral or documentary evidence. The Family Court, on consideration of the rival pleadings, concluded that the respondent is the legally wedded wife of the appellant and the appellant and the respondent are residing separately. Taking note of the earnings of the appellant and the inability of the respondent to maintain herself, the Family Court directed the appellant to pay a sum of Rs.3,000/- per month towards interim maintenance to the respondent and another sum of Rs.5,000/- towards litigation expenses. It is this order passed by the Family Court, which is challenged in this Civil Miscellaneous Appeal.

6. The learned counsel for the appellant would contend that the Family Court did not consider the fact that the marriage was solemnised by suppressing the physical condition of the respondent which had rendered the marriage a nullity. It is further stated that the Family Court has not considered the fact that the appellant retired from service and he has no sufficient means to maintain himself and the two children born to the deceased first wife, which so, directing the appellant

to pay a sum of Rs.3,000/- per month towards interim maintenance and another sum of Rs.5,000/- towards litigation expenses has to be set aside.

7. Per contra, the learned counsel for the respondent would contend that even before the appellant could file the Original Petition, the respondent had sent a notice dated 12.09.2013 to the appellant stating that she is the second wife of the appellant and that the appellant had two children born to him through his deceased first wife. It was also stated by the respondent that the appellant and the two children born to the first wife of the appellant have driven her out of the matrimonial home and therefore her desertion is not voluntary. Further, the respondent has no independent source of income to maintain herself and she is depending on her parents and brothers for her livelihood. Even though the respondent claimed a sum of Rs.5,000/- per month towards maintenance amount, the Family Court directed the appellant only to pay a meagre sum of Rs.3,000/- per month towards interim maintenance. It is further stated by the learned counsel for the respondent that the appellant was employed in Madras Port Trust and he tendered his voluntary resignation from his service. Even after retirement, the appellant is working in a private company and receiving salary. Therefore, the learned counsel for the respondent would contend that the appellant is capable of paying the sum of Rs.3,000/- per month to the respondent and therefore he prayed for dismissal of this appeal.

8. We have heard the counsel for both sides and perused the materials placed on record. The respondent has filed an application in I.A. No. 57 of 2015 in OP No. 69 of 2014 under Section 24 of the Hindu Marriage Act seeking interim maintenance of Rs.5,000/- per month and Rs.10,000/- towards litigation expenses. Admittedly, the appellant as well as the respondent did not let in any oral evidence or marked any documentary evidence in support of their respective claim. According to the respondent, the appellant was earlier working in Madras Port Trust and when the respondent was staying in her parents house, he tendered his voluntary resignation and retired from service. It is further stated that even after his retirement, the appellant is employed in a private company and earning salary. On the other hand, the respondent has no independent source of income to maintain herself and she is depending on her parents and brothers even for her petty expenses. Such a contention of the respondent has not been denied by the appellant in his counter affidavit. It is not the case of the appellant that the respondent is employed and she is capable of maintaining herself. It is needless to mention that the obligation of the appellant to maintain the respondent is not only legal but also moral. The Family Court, taking into account the materials made available, has rightly directed the appellant to pay a sum of Rs.3,000/- per month towards interim maintenance and another sum of Rs.5,000/- towards litigation expenses. We do not find any reason to interfere with such an order passed by the Family Court.

9. In the result, we confirm the Order dated 31.07.2015 made in I.A. No. 57 of 2015 in HMOP No. 69 of 2014 on the file of Family Court, Nilgiris at Udhagamandalam. The Civil Miscellaneous Appeal is dismissed. No costs. The appellant is directed to deposit the arrears of maintenance amount to the credit of HMOP No. 69 of 2014 on the file of Family Court, Nilgiris at Udhagamandalam within a period of one month from the date of receipt of a copy of this order. On such deposit, the respondent is permitted to withdraw the amount. Further, having regard to the fact that the Original Petition filed by the appellant is pending on the file of Family Court from the year 2014, the Family Court, Nilgiris at Udhagamandalam is directed to take up HMOP No. 69 of 2014 for hearing and dispose it of within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition No. 384 of 2016 is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

rsh
To

The Presiding Judge,
Family Court
The Nilgiris at Udhagamandalam.

Copy to:The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. S. Makesh, Advocate SR.27129
+1 cc to M/s. M/s. Lenin & Bagya, Advocate Sr.27055

SV(CO)
EU(20/08/2018)

CMA No. 47 of 2016

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