

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2381 of 2017

T.K.Prabhu

... Appellant

-vs-

J.Glory

... Respondent

Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, to set aside the fair and decretal order dated 19.06.2017 in IA No.176 of 2015 in IDOP No.02 of 2015 passed by the court of the Principal District Judge, Vellore.

For Appellant : Mr.T.Gowtham

For Respondent : Mr.J.Selvarajan

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN, J.]

The petitioner in I.D.O.P.No.2 of 2015 who was directed to pay a sum of Rs.5,000/- as interim maintenance for his minor daughter has come forward in this appeal seeking reduction.

2. The marriage between the petitioner and the respondent took place on 16.09.2004. According to the appellant, the respondent wife left the matrimonial home even in 2005 which forced him to file I.D.O.P.No.47 of 2008 under Section 32 of Indian Divorce Act seeking restitution of conjugal rights. The said petition was allowed by the District Court, Vellore on 25.03.2010. Despite the said order, the respondent wife did not rejoin him in the matrimonial home. Therefore, the husband/appellant had filed I.D.O.P.No.2 of 2015 seeking divorce under Section 10 (VIII, IX & X) of Indian Divorce Act, 1869. The said petition was resisted by the wife on various grounds. Pending the same, the wife filed an application in IA No.176 of 2015 seeking interim maintenance at the rate of Rs.15,000/- per month for the minor daughter and litigation expenses of Rs.25,000/-.

3. The appellant/husband resisted the application, contending that he has no means to pay maintenance. According to him, he is working as a stunt artist on a daily salary and he will not get employment on all the 30 days. He would also claim that the wife who is a qualified nurse is in government service drawing a salary of Rs.36,000/- per month.

4. The Principal District Judge, Vellore who heard the application seeking payment of interim maintenance concluded that even though the respondent wife is having permanent job in a fixed monthly salary, as a father, the appellant is duty bound to maintain his minor daughter. On such finding, the Tribunal directed the husband to pay a sum of Rs.5,000/- per month to the child as maintenance, while declining the litigation expenses. Aggrieved, the husband has come forward in this appeal.

5. We have heard Mr.T.Gowthaman learned counsel for the appellant, Mr.S.Santhan for the appellant and Mr.J.Selvarajan learned counsel appearing for the husband.

6. Mr.T.Gowthaman would contend that the Principal District Judge was not right in directing payment of Rs.5,000/- as maintenance, in view of the fact that the wife herself has admitted the husband has only a temporary employment as a stunt artist.

7. Per contra, Mr.J.Selvarajan learned counsel appearing for the respondent would contend that the wife being employed is not seeking maintenance for herself, the interim maintenance is only for the minor daughter. According to the learned counsel, as the father, the appellant is bound to maintain his minor child.

8. We have heard rival submissions. There is no evidence to show that the husband is having a regular employment and drawing a fixed monthly salary. Though, it is claimed in the petition that he is employed as a teacher and drawing a sum of Rs.40,000/- per month as salary, the same has not been proved by any acceptable evidence. Even in the reply notice, it is stated that the husband has lied about his profession and income at the time of marriage. We also find that the respondent wife is a qualified nurse, in government service drawing a decent salary. We are therefore of the opinion that the Family Court was not justified in directing the payment of maintenance at Rs.5,000/- per month. At the same time, we do not think that the appellant can wash his hands and claim that he would not maintain his minor child. The appellant had admitted that he is a stunt artist working in the Cine field. Considering the same, he would get employment for at least 15 days in a month, he would earn not less than Rs.10,000/- to Rs.15,000/- per

month. We are, therefore, of the considered opinion that interest of justice saved by directing the appellant to pay a sum of Rs.4,000/- as interim maintenance for the minor daughter from the date of petition that is 13.08.2015. It is stated that the appellant has paid 50% of the arrears pursuant to the interim order made in this appeal. The appellant is directed to pay the arrears of maintenance within a period of 4 weeks from the date of receipt of copy of this judgment and he has to pay the maintenance at Rs.4,000/- per month till the disposal of the IDOP by the District Principal Court, Vellore. However, in the circumstances there will be no order has to cost in this appeal.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

kkn

To

The Principal District Judge,
Vellore.

+1cc to Mr.S.Santhan, Advocate, S.R.No. 65544

CMA.No.2381 of 2017

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