

In the High Court of Judicature at Madras

Reserved on : 12.04.2018

Delivered on: 20.04.2018

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

C.M.A.No.621 of 2018
and
CMP.No.5568 of 2018

S.Aravind ..Appellant/ Petitioner

..vs..

Sowmiya ..Respondent/ Respondent

Civil Miscellaneous Appeal has been filed under Section 19 (1) of the Family Courts Act, 1984, against the order dated 19.09.2017 passed in I.A.No.552 of 2017 in F.C.O.P.No.135 of 2017 on the file of the Family Court, Erode, Erode District.

For Appellant : Mr.M.Mariappan

For Respondent : Mr.Arundattan for Mr.C.Munusamy

JUDGMENT

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

The order dated 19.09.2017 passed in I.A.No.552 of 2017 in FCOP.No.135/2017 by the learned Family Judge, Erode, awarding interim maintenance at the rate of Rs.10,000/- per month to the respondent / wife, is under assail in this appeal, at the instance of the appellant / husband.

2.Shorn of the minute details, the facts, which are germane and necessary for the disposal of this appeal, are as follows:

2.1 The marriage between the appellant /husband and the respondent /wife was solemnized on 27.08.2015 at Vengambur Arulmighu Sri Varadaraja Perumal Thirukoil, Kodumudi Taluk, Erode District as per the Hindu rites and customs.

2.2 As there was some misunderstanding between the appellant / husband and the respondent / wife during the course

of their matrimonial life, the appellant / husband has filed FCOP No. 135 of 2017 before the Family Court, Erode under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 for dissolution of the marriage, on the ground of cruelty.

2.3 Pending the said petition, the respondent / wife has filed an application in I.A.No.552 of 2017 seeking interim maintenance at Rs.20,000/- per month and litigation expenses at Rs.10,000/-, stating that the appellant/husband is owning an agricultural land at Vadugampatti Village, Devanampalayam and is also earning from Rs.6,000/- to Rs.9,000/- per day by running a bus under the name and style of K.K.R.Bus Services. According to her, she was harassed and beaten by the appellant / husband and his mother by demanding dowry and ultimately, driven out of the matrimonial home, at their instance.

2.4 Denying the allegations raised in the said application, the appellant / husband has filed a counter affidavit, stating that he is running a minibus by employing a driver, through which, he is earning a paltry sum, which is sufficient enough to meet out only the loan amount and his basic needs. According to him, the respondent /wife is working as a Professor in Vivekananda College of Nursing, Thiruchengode and is earning a sum of Rs.30,000/- per month, besides earning a sum of Rs.10,000/- by taking tuition after working hours.

2.5 By order dated 19.09.2017, the Family Court, after hearing both the parties, awarded a sum of Rs.10,000/- towards interim maintenance to the respondent / wife. Aggrieved over the same, the appellant / husband has come up with the present appeal.

3.Reiterating the averments made in the counter affidavit filed by the appellant / husband in I.A.No.552/2017, the learned counsel for the appellant / husband contended that the respondent / wife is having sufficient means to maintain herself as well as to meet out the expenses of the proceedings, whereas, the appellant / husband is finding it difficult to repay the loan amount and lead his day-to-day life, by getting income in operation of the mini bus. However, without considering the same in proper perspective, the Family Court directed the appellant / husband to pay a sum of Rs.10,000/- towards interim maintenance, to the respondent/ wife, which is erroneous, unfair and arbitrary and is hence, liable to be set aside.

4.Per contra, the learned counsel for the respondent / wife submitted that the Family Court, after considering all the aspects in detail, awarded the interim maintenance to the respondent/ wife, which does not call for any interference by this Court.

5.We have carefully considered the submissions made by the learned counsel appearing for the parties and also gone through the materials placed before us.

6.It is not in dispute that the original petition filed by the appellant/husband seeking dissolution of the marriage, is pending before the Family Court, Erode. At this stage, the spouse, who has no independent source of income, may file an application under Section 24 of the Hindu Marriage Act, in order to obtain the requisite maintenance and legitimate expenses for contesting the matrimonial proceedings from the other party. Such application being temporary in nature, may not survive, after the matrimonial proceedings come to an end. Accordingly, the respondent / wife has filed the application under Section 24 of the Hindu Marriage Act, in which, the Family Court has directed the appellant / husband to pay a sum of Rs.10,000/- per month towards interim maintenance to her.

7.It is an admitted fact that the appellant / husband is running a mini bus. He pleaded that the respondent / wife is earning a sum of Rs.30,000/- per month by working as a Professor in a College at Thiruchengode and is making a good living. However, he has miserably failed to substantiate the said pleadings with any evidence. In our opinion, mere bald averments without any support in the form of any kind of evidence, do not inspire the confidence of this Court.

8.At this juncture, it is apropos to point out that the respondent / wife is having the right to live commensurate with the status of her husband. Just because the respondent / wife is constrained to do some work on account of her cash-strapped situation, that does not mean that the appellant / husband should plead that she should continue to do that work and eke out her living and should not expect anything from her husband.

9.The Family Court, after considering the pleadings of the appellant / husband, has observed that the respondent / wife, based on her educational qualification, would earn a sum of Rs.5,000/- per month by doing any job and ultimately, awarded only a pittance of Rs.10,000/- per month towards interim maintenance as against the claim of Rs.20,000/- per month made by the respondent / wife.

10.In such view of the matter, we do not find any reason to interfere with the order so passed by the Family Court in awarding interim maintenance to the respondent / wife.

11.Resultantly, this Civil Miscellaneous Appeal is 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 Family Court, Erode is directed to dispose of FCOP No.135 of 2017 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/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

The Judge, Family Court, Erode.

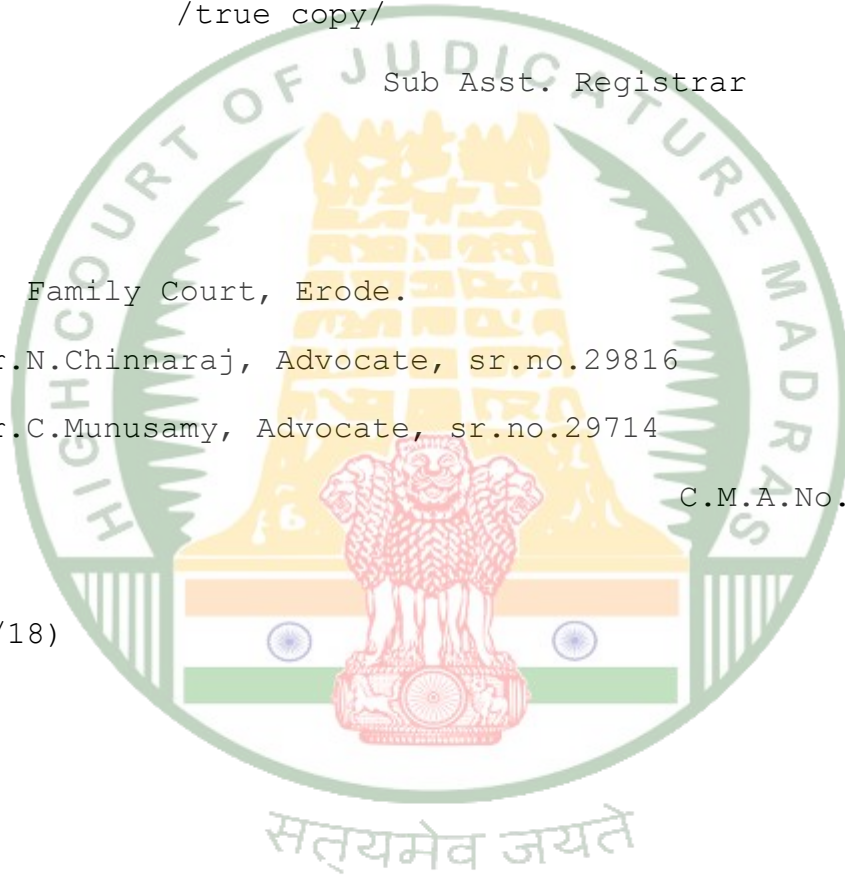
+1cc to Mr.N.Chinnaraj, Advocate, sr.no.29816

+1cc to Mr.C.Munusamy, Advocate, sr.no.29714

C.M.A.No.621 of 2018

NMI (CO)

RRK (28/05/18)



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