

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.03.2018

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.3335 of 2017
and
C.M.P.No.21119 of 2017

R.Jegathesan ...Appellant/Respondent

vs.

Kalpana Respondent/Petitioner

Civil Miscellaneous Appeal filed against the order dated 25.01.2017 passed by the Additional Principal Family Court, Coimbatore, in I.A.No.434 of 2016 in H.M.O.P.No.84 of 2012.

For Appellant :Mr.I.Abrar Md.Abdullah

For Respondent :Mr.K.Thilageswaran

JUDGMENT

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

This Civil Miscellaneous Appeal has been directed against the order dated 25.01.2017 passed in I.A.No.434 of 2016 in H.M.O.P.No.84 of 2012, by the Additional Principal Family Court, Coimbatore.

2.The appellant herein, as petitioner, has filed H.M.O.P.No.84 of 2012, under Sections 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, praying to pass a decree of divorce, wherein, the present respondent has been shown as sole respondent.

3.During pendency of the same, the respondent, as petitioner, has filed I.A.No.434 of 2016, under Section 25 of the Hindu Marriage Act, 1955, praying to direct the respondent therein to give permanent alimony or monthly maintenance of Rs.30,000/-.

4.The trial Court, after considering the available evidence on record, has granted a decree of divorce by way of allowing H.M.O.P.No.84 of 2012 and simultaneously allowed I.A.No.434 of

2016 and thereby directed the respondent therein/appellant herein to pay permanent alimony of Rs.5 lakhs to the petitioner and the same is being challenged in the present Civil Miscellaneous Appeal.

5.Before considering the rival submissions made on either side, it has become indivisible to narrate the following admitted facts.

6.It is an admitted fact that the respondent herein is the legally wedded wife of the appellant. The appellant, as petitioner, has filed H.M.O.P.No.84 of 2012, under Sections 13 (1)(ia)(ib) of the Hindu Marriage Act, 1955, praying to dissolve the marriage held between him and respondent. It is also equally an admitted fact that during pendency of H.M.O.P.No.84 of 2012, the respondent has filed I.A.No.434 of 2016, under Section 25 of the Hindu Marriage Act, 1955, praying to pass an order of permanent alimony or monthly maintenance to the tune of Rs.30,000/-. As mentioned supra, the trial Court has granted a decree of divorce by way of allowing H.M.O.P.No.84 of 2012 and also allowed I.A.No.434 of 2016 and thereby directed the respondent therein/appellant herein to pay permanent alimony of Rs.5 lakhs.

7.The learned counsel appearing for the appellant has contended to the effect that the appellant is not having sufficient means to pay quantum of permanent alimony fixed by the trial Court and further, he has already paid maintenance to the respondent. Under such circumstances, the order passed in I.A.No.434 of 2016 by the trial Court is liable to be modified or set aside.

8.The learned counsel appearing for the respondent/petitioner has contended to the effect that the trial Court, after considering the overall evidence available on record, has rightly directed the appellant to pay permanent alimony of Rs.5 lakhs by way of allowing I.A.No.434 of 2016 and therefore the order passed by the trial Court in I.A.No.434 of 2016 is not liable to be interfered with.

9.As narrated supra, during pendency of H.M.O.P.No.84 of 2012, I.A.No.434 of 2016 has been filed under Section 25 of the Hindu Marriage Act, 1955.

10.The main grievance expressed on the side of the appellant is that he is not having sufficient means to pay permanent alimony of Rs.5 lakhs.

11.It is seen from the records that the respondent/wife has already attained age of 48 and there is no scope for having remarriage and further on the side of the petitioner in I.A.No.434 of 2016, some documents have been filed, wherein, it has been clearly stated that the father of the

respondent/husband has got some immovable properties through partition.

12.Considering the fact that the respondent/wife has already attained age of 48 and there is no scope of conducting remarriage and also considering that the appellant is having sufficient immovable properties, this Court is of the view that the trial Court has rightly directed the appellant to pay permanent alimony of Rs.5 lakhs. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellant and altogether, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed without costs. The order passed in I.A.No.434 of 2016 in H.M.O.P.No.84 of 2012 by the trial Court is confirmed. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msk

To

The Additional Principal Family Court,
Coimbatore

+1 cc to Mr.Zabrar Md Abdullah Advocate sr 16235

C.M.A.No.3335 of 2017

vsn(co)

aa16/03/2018

सत्यमेव जयते

WEB COPY