

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.3507 of 2017
and
C.M.P.No.22322 of 2017

P.Manohara Moorthy ... Appellant
vs.

1.Mrs.S.Suganya
2.Baby M.Tejasree,
minor, rep.by her
mother and natural guardian
Mrs.S.Suganya ... Respondents

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the order dated 23.10.2017 passed in I.A.No.447 of 2017 in H.M.O.P.No.3539 of 2016, by the VI Additional Family Court, Chennai.

For Appellant : Mr.R.Ramakrishnan
For Respondents : Mr.S.Thiruvangadam

JUDGMENT

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

This Civil Miscellaneous Appeal has been directed against the order dated 23.10.2017 passed in I.A.No.447 of 2017 in H.M.O.P.No.3539 of 2016, by the VI Additional Principal Family Court, Chennai.

2.The appellant herein, as petitioner, has filed H.M.O.P.No.3539 of 2016, on the file of the trial Court, praying to pass a decree of divorce, wherein, the first respondent herein has been arrayed as sole respondent.

3.During pendency of the same, the first respondent has filed a petition under Section 24 of the Hindu Marriage Act, 1955, praying to direct the appellant/petitioner/respondent to pay a sum of Rs.40,000/- as interim monthly maintenance of the second petitioner.

4.The trial Court, after considering the overall circumstances available on record, has directed the appellant/respondent to pay interim monthly maintenance of Rs.20,000/- to the second petitioner, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant/respondent has contended to the effect that the first petitioner is also an employee and also drawing attractive monthly salary and the trial Court, without considering the status of the first petitioner, erroneously directed the appellant/respondent to pay a sum of Rs.20,000/- per mensem as interim maintenance of the second petitioner and therefore, the order passed by the trial Court is liable to be modified.

6.The learned counsel appearing for the respondents/petitioners has contended to the effect that the second petitioner is aged about 4 years and now the second petitioner is under the care and custody of the first petitioner. Under the said circumstances, the appellant/respondent, being the father of the second petitioner is bound to maintain him and the trial Court, after considering the overall circumstances available on record, has rightly passed the impugned order and therefore, the same does not require any interference.

7.For considering the rival submissions made on either side, the Court has to look into Section 26 of the Hindu Marriage Act, 1955, wherein it has been clearly stated that in any proceeding under this Act, the Court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, alter the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the Court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

8.Even a cursory look of the provisions of the said Section, it is made clear that if any proceeding is pending under the Hindu Marriage Act, 1955, as per Section 26 of the said Act, minor child is entitled to get interim maintenance.

9.The only gravamen expressed on the side of the appellant/respondent is that the amount fixed by the trial Court is highly excessive.

10.Considering the age of the second petitioner and also considering the fact that the second petitioner is under the care and custody of the first petitioner, this Court is of the view that Rs.10,000/- would be sufficient to maintain the second petitioner and to that extent, the present Civil Miscellaneous Appeal is liable to be allowed and the order passed by the trial Court is liable to be modified.

In fine, this Civil Miscellaneous Appeal is allowed in part without costs. The order passed in I.A.No.447 of 2017 in H.M.O.P.No.3539 of 2016, by the trial Court, is modified as follows:

The appellant/respondent is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) per mensem as interim maintenance of second petitioner. The trial Court is directed to dispose of the H.M.O.P.No.3539 of 2016 before the end of March 2018 and report the same to the Registry without fail. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msk

To

The VI Additional Principal Judge,
Chennai.

Copy To

The Section Officer,
Judicial Section,
High Court, Madras
(For Watching the Report)

+1cc to Mr.S.Thiruvangadam, Advocate, S.R.No.7116

+1cc to Mr.R.Ramakrishnan, Advocate, S.R.No.7006

C.M.A.No.3507 of 2017

SSI(CO)
CS/13/02/18