

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.04.2018

DELIVERED ON: 05.06.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.M.A.NO.822 OF 2018

AND

CMP.NO.6783 OF 2018

G.John Edward ..Appellant/Petitioner

..vs..

Sabina Mary ..Respondent/Respondent

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, against the order dated 29.11.2017 passed in I.A.No.2525 of 2016 in O.P.No.2654 of 2014 on the file of the learned V Additional Family Court, Chennai.

For Appellant : Mr.T.Saravanan

For Respondent : Mr.David Tyagaraj

JUDGMENT

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

The challenge made in this Civil Miscellaneous Appeal is to the order dated 29.11.2017 passed in I.A.No.2525 of 2016 in O.P.No.2654 of 2014 by the V Additional Family Court, Chennai, directing the appellant/husband to pay a sum of Rs.10,000/- per month (Rs.7,000/- to the respondent / wife and Rs.3,000/- to her minor son) towards interim maintenance from the date of the petition.

2.The facts, which give rise to the present appeal are as under:

2.1 The appellant /husband has married the respondent / wife on 10.05.2010 at St.John DE Britto Church, Villivakkam, Chennai, as per the Christian rites and customs. Through the

wedlock, a male child was born on 26.5.2011 and was named as Danny Todd. Thereafter, due to misunderstanding between the parties, the appellant/ husband has filed a petition in OP.No.2654 of 2014 under Section 10 of the Divorce Act IV of 1869 (hereinafter shortly referred to as 'the Act') against the respondent / wife seeking dissolution of the marriage on the ground of cruelty.

2.2 Pending the said petition, the respondent/ wife has filed an interlocutory application in I.A.No.2525 of 2016 under Section 36 of the Act, seeking a direction to the appellant / husband to pay a sum of Rs.25,000/- per month towards maintenance for her as well as her minor son and to pay a sum of Rs.25,000/- towards litigation expenses.

2.3 The respondent/wife has averred in the said interlocutory application that she filed a petition for restitution of conjugal rights; her son Danny Todd is partially visually impaired, due to which, he requires proper treatment; while she was leaving from the matrimonial home, the appellant/ husband was drawing a sum of Rs.75,000/- per month by working as a Sales Manager in Cozent Pvt. Ltd., Egmore, Chennai; the appellant / husband failed to maintain her and her son and deserted them in lurch.

2.4 Denying the averments so made in the said interlocutory application, the appellant / husband has filed a counter affidavit stating that his son was in good health and if he suffers from any vision impairment, it may be due to the brutal attack of the respondent / wife. According to him, he was relieved from the job on 01.08.2014 and thereafter, he met with an accident on 02.11.2016 and sustained grievous injuries including fracture, due to which, he is unemployed, whereas, the respondent/wife is happily living with her mother at Villivakkam; she filed the said application with an intention to extract money from him as well as ancestral properties from his parents. It is his further case that the respondent / wife has also filed a petition under Section 125(1)(a) and (b) Cr.P.C seeking maintenance.

2.5 Upon hearing both sides, by order dated 29.11.2017, the Family Court has directed the appellant / husband to pay the interim maintenance of Rs.7,000/- per month to the respondent / wife and Rs.3,000/- per month to the minor son. Aggrieved over the same, the appellant / husband is before this Court with the present appeal.

3.The learned counsel for the appellant / husband would contend that the appellant / husband was relieved from the job with effect from 31.07.2014 and thereafter, he met with an

accident and sustained grievous injuries, due to which, he is now, unemployed. To substantiate the same, the appellant/husband has produced a copy of the relieving order dated 01.08.2014 issued by the authorized person of the company, in which, he was working, before the Family Court. However, without considering the same in a proper perspective, the Family Court has awarded interim maintenance to the respondent / wife and her minor son, by the order impugned herein, which, according to the learned counsel, is erroneous, unjust and arbitrary and is liable to be set aside.

4. On the contrary, the learned counsel for the respondent/wife would contend that the Family Court, after analysing all the aspects in detail and upon considering the submissions made by the parties, has rightly directed the appellant / husband to pay Rs.10,000/- per month towards interim maintenance to the respondent / wife as well as her minor son, which does not call for any interference.

5. We have considered the contentions made by the learned counsel for the parties and also perused the materials placed before us.

6. Concededly, the appellant / husband has filed a petition seeking dissolution of the marriage solemnized with the respondent / wife. Pending the same, the respondent / wife has filed I.A.No.2525 of 2016, which was allowed by directing the appellant / husband to pay the monthly maintenance of Rs.7,000/- to the respondent / wife and Rs.3,000/- to her minor son.

7. According to the respondent / wife, the appellant / husband was working as a Sales Manager in Cogzent Pvt. Ltd., Egmore, Chennai and was getting a salary of Rs.75,000/- per month, which was seriously refuted by the appellant / husband by producing a copy of the relieving order dated 01.08.2014 issued by the authorized officer of the said Company to the effect that he was relieved from service with effect from 31.07.2014 and he is unemployed due to the accident which took place on 02.11.2016. However, the appellant / husband failed to mark the said relieving order as an exhibit by examining a competent witness. Unless the said document is marked through a competent witness, the veracity of the same cannot be tested. Hence, in the absence of any documentary or oral evidence, the stand taken by the appellant / husband with regard to his non-employment at present, cannot be countenanced by this Court.

8. Moreover, the Family Court has awarded only a sum of Rs.10,000/- as monthly maintenance i.e., Rs.7,000/- to the respondent/ wife and Rs.3,000/- to her minor son, which, in our

opinion, cannot be said to be an exorbitant sum at any stretch of imagination.

9.In such perspective of the matter, the order impugned in this appeal is perfectly right and the same does not suffer from any infirmity or illegality and the same is hence, confirmed.

10.Accordingly, 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 V Additional Family Court, Chennai is directed to dispose of OP.No.2654 of 2014 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/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The V Additional Family Court,
Chennai.
2. The Section Officer,
VR Section, High Court,
Madras (2 copies)

+1cc to Mr.T.Saravanan, Advocate, S.R.No.34726
+2ccs to Mr.David Tyagaraj, Advocate, S.R.No.34675

GP(CO)
CS/28/06/18

C.M.A.No.822 of 2018

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