

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.07.2018

CORAM :
THE HONOURABLE MR.JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No.823 of 2018 and
C.M.P.No.6795 of 2018

Karthikeyan .. Appellant/Respondent/Respondent

C.Revathi Vs.
... Respondent/Petitioner/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, to set aside the fair order and decretal order dated 27.02.2018 made in I.A.No.1244 of 2017 in F.C.O.P.No.351 of 2017 on the file of the learned Judge, Family Court, Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : M/s.V.Balamurugan

JUDGMENT

C.SARAVANAN, J

The present appeal is directed against fair and decretal order dated 27.02.2018 passed by the learned Judge, Family court, Erode in I.A.No.1244 of 2017 in F.C.O.P.No.351 of 2017 (for brevity referred to as the Family Court and the impugned order respectively).

2. The respondent herein filed F.C.O.P.No.351 of 2017 before the Family Court, Erode to dissolve the marriage solemnized with the appellant under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955.

3. Pending the said O.P., the respondent has also filed I.A.No.1244 of 2017 to direct the appellant-husband herein to pay a sum of Rs.20,000/- as interim maintenance per month for their child and a sum of Rs.10,000/- per annum towards future educational expenses for their child and a sum of Rs.10,000/- towards litigation expenses.

4. The Family Court has partly allowed the relief in favour of the respondent in I.A.No.1244 of 2017 with a direction to the appellant-husband to pay a sum of Rs.7,500/- per month towards interim maintenance of their child from the date of petition.

5. While awarding the interim maintenance, the Family Court has considered the fact that the appellant-husband had capacity to borrow money to repay home loan and therefore had sufficient means to maintain the respondent and the child.

6. As per the impugned order, the aforesaid interim maintenance of Rs.7,500/- is payable on or before the 5th day of every English Calendar month from the date of petition till the date of disposal of F.C.O.P.No.351 of 2017. Aggrieved by the said order, the appellant husband has filed the present civil miscellaneous appeal before this Court.

7. The learned counsel for the appellant submits that though the respondent is also earning income she was pressurizing the appellant-husband for interim maintenance and the Family Court without considering this aspect, has directed the appellant herein to pay a sum of Rs.7,500/- as maintenance for the child.

8. The learned counsel for the appellant further submitted that the interim maintenance of Rs.7,500/- fixed for a three years old child is on the higher side and therefore the Family Court erred in awarding a sum of Rs.7,500/- p.m. as interim maintenance.

9. Per contra, the learned counsel for the respondent submitted that the marriage between the appellant and respondent was solemnized on 02.02.2014. However, they are living separately due to family dispute at the time of child birth. Thereafter, the respondent herein filed a petition F.C.O.P.No.351 of 2017 to dissolve the marriage under section 13 (i)(i-a)(i-b) of the Hindu Marriage Act, 1955. The respondent does not have sufficient source of income to maintain herself and the minor child. Under these circumstances, a sum of Rs.7,500/- awarded by the Court as interim maintenance for the child cannot be found fault with.

10. We have considered the submission made by the learned counsel for the appellant and the respondent and pleading, evidence on record and grounds of appeal.

11. We are not going into the merits of the divorce petition and are confining this order only with reference to the quantum awarded by the Family Court in the impugned order.

12. Scope of section 24 of the Hindu Marriage Act, 1955 while awarding interim maintenance is limited. It is intended to support a spouse who does not have sufficient income during the course of the matrimonial proceeding.

13. In this regard, it is relevant to refer to the Judgment

of the Division Bench of this Court in Mrs.Savithri Selvakumar vs. Dr.S.Selvakumar in CMA.No.1213 of 2016, dated 22.09.2017. Para 14 reads as under:

" 14. The object of Section 24 of the Hindu Marriage Act is not to elevate the status or standard of the husband or wife as the case may be to be on par with each other. The purpose of awarding pendente lite maintenance is to ensure that adequate financial support is provided for the husband or wife when there is no independent income to maintain himself or herself as the case may be during the pendency of matrimonial proceedings. The financial status of the husband or wife can be taken note of by the Court only for fixation of quantum of maintenance and it is not a criteria for matching the financial status of the wife or husband as the case may be."

14. The ruling of the Court is clear that the financial status of the husband or wife can be taken note of by the Court only for fixation of quantum of maintenance and it is not a criteria for matching the financial status of the wife or husband as the case may be.

15. Both the appellant and the respondent are educated and are employed. However, the respondent is bringing up the child herself. The appellant as a father of the child is also bound to maintain the child and share the expenses connected therewith and cannot shift the entire financial burden of bringing up the child and leave the maintenance of their child on to the respondent. The appellant is equally responsible for the welfare of the child and cannot walk away from his financial responsibility to his child.

16. Therefore, the reason of the Family Court to award interim maintenance for the child cannot be faulted. However, Rs.7,500/- p.m awarded towards interim maintenance of a child of 3 years appears to be on the higher side and warrants interference. It is therefore modified to Rs.5000/- p.m.

17. It is noticed that the parties are comparatively of a young age with a young child. Therefore, the Family Court, Erode is directed to take up the case and complete the proceeding by 31.01.2019.

18. The impugned order dated 27.2.2017 in I.A.No.1244 of 2017 in F.C.O.P.No.351 of 2017 passed by the Family Court, Erode is accordingly modified as follows:

- i) The appellant-husband is directed to pay the arrears of the interim maintenance of the child to the respondent calculated at

Rs.5000/-p.m. together with interest at 7.5% p.a from the date of I.A.No.1244 of 2017 within a period of 15 days of this order;

ii) The appellant shall continue to pay the aforesaid sum of Rs.5,000/- p.m to the respondent until final disposal of F.C.O.P.No.351 of 2017.

iii) The learned Judge, Family Court, Erode is directed to take up the F.C.O.P.No.351 of 2017 and dispose the case in accordance with law as expeditiously as possible on or before 31st January 2019.

19. The civil miscellaneous appeal is partly allowed with the above direction. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkd

To

The Judge Family Court,
Erode.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.44678

+1cc to Mr.P.Muthukumaarasaamy, Advocate, S.R.No.44850

C.M.A.No.823 of 2018
and
C.M.P.No.6795 of 2018

SSV(CO)

rrs 10/10/2018

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