

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-07-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 965 of 2018

N. Imtiaz Shariff .. Appellant/Plaintiff

Versus

M. Shabana Begum .. Respondent/Defendant

Appeal filed under Section 19 (1) of The Family Court Act against the Fair and Decreetal Order dated 20.12.2017 passed in I.A. No. 1621 of 2016 in O.S. No. 136 of 2015 on the file of IV Additional Family Court, Chennai.

For Appellant : Mr. Md. Ashfaq Rafi

For Respondent : Mr. T.K. Rajasekaran

JUDGMENT

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

The appellant/husband has filed this appeal questioning the legality and/or correctness of the order dated 20.12.2017 passed in I.A. No. 1621 of 2016 in O.S. No. 136 of 2015 on the file of IV Additional Family Court, Chennai. By the said Order, the Family Court allowed the application filed by the respondent herein and directed the appellant to pay a sum of Rs.1,18,400/- towards the educational and other expenditures to be incurred for the two minor sons.

2. The appellant herein has filed the suit in O.S. No. 136 of 2015 praying to pass a Decree and Judgment directing the respondent herein to join him along with the two children and to live with him so as to lead a happy matrimonial life.

3. As per the averments in the plaint filed by the appellant herein, the marriage between the appellant and the respondent was solemnised on 08.03.2009 as per Islamic rites and customs at Shiraz Hall, Egmore. Due to the wedlock, two male children were born. According to the appellant, the married life with the respondent was not peaceful and blissful owing to the misdeeds of the respondent. According to the

appellant, even though he provided all comforts to the respondent befitting his financial status, the respondent compelled him to lead a life of extravagance and luxury. The respondent is only interested in the money earned by the appellant. In this context, the respondent resorted to unreasonable quarrel with the appellant and on 15.11.2014, she deserted the matrimonial company of the appellant accompanied by the two children and in spite of all efforts taken by the appellant, she refused to join the matrimonial home along with the two children. In such circumstances, the appellant has filed the suit for restitution of conjugal rights.

4. On notice, the respondent filed an application in I.A. No. 1621 of 2016 contending inter alia that the appellant did not shower any love and affection towards her. The appellant, due to the ill advise of his two sisters, had betrayed the welfare of the respondent and the minor children. The desertion of the respondent is not voluntary but she was made to leave the matrimonial company of the appellant due to compelling necessity. The respondent is not employed and she is under the care and custody of her parents. The parents of the respondent find it very difficult to meet the educational expenses of the two minor children who are studying in As-Salaam International School at No.46/68, (58/59), Mir Bakshi Ali Street, Royapettah, Chennai - 600 014. The elder son is studying Senior KG Standard while the younger son is studying Junior KG Standard. The respondent also furnished the particulars of the school fees already paid by her towards the educational expenses of the minor children with break up details. The respondent also enclosed a list of the expenses incurred for purchase of books, stationary, shoes etc., In such circumstances, the respondent has filed the aforesaid application to direct the appellant to pay Rs.1,18,400/- to the respondent towards the educational fees, stationeries etc., paid and payable to her, morefully set out in the list enclosed along with the application.

5. The application filed by the respondent was resisted by the appellant by filing a counter affidavit. It was contended that the respondent had never taken any steps to join the appellant in the matrimonial home and the respondent, who deserted the matrimonial company of the appellant, cannot seek for payment of the amount paid towards the educational expenses of the minor children. On 15.11.2014, the respondent left the matrimonial home. After conciliation, she returned on 05.12.2014 and once again deserted the appellant on 31.12.2014. On 31.12.2014, the respondent had taken all the jewellery and articles which belonged to her. It was further contended that if the respondent is unable to maintain the two children, their custody can be vested with the appellant so as to enable him to take care of the minor children. Accordingly, the appellant prayed for dismissal of the application.

6. Before the trial court, neither the appellant nor the respondent examined any witness or produced any document in support of their respective claim. The trial court, taking into

account the fact that the two male children are studying in the school and as the respondent is not gainfully employed anywhere, the appellant, as a father, owes a duty to pay the educational expenses of the minor child, allowed the application as prayed for.

7. The learned counsel for the appellant would contend that the appellant had filed the suit for restitution of conjugal rights in which he had clearly stated that the respondent had voluntarily deserted his matrimonial company. The respondent has not filed any counter in the suit or denied the averments in the suit, rather, she has chosen to file an application to direct the appellant to pay the educational and other expenditure to be incurred or incurred by her towards the minor children. The court below without any enquiry or documentary evidence filed by the respondent, merely relied on the list of bills produced by the respondent to conclude that the appellant is bound to pay the educational expenses payable to the minor children. The learned counsel for the appellant therefore prayed for setting aside the order passed by the court below.

8. Per contra, the learned counsel for the respondent would contend that the appellant did not deny the fact that the minor children are studying in the school and for their educational expenses, the appellant, as a father, is bound to incur the educational expenses. The Court below, taking into account the above fact, has allowed the application filed by the respondent as prayed for and prayed for dismissal of the appeal.

9. We have heard the counsel for both sides and perused the materials placed on record. Pending the suit filed by the appellant for restitution of conjugal rights, the respondent has filed an application praying to direct the appellant, who is the father of the two minor children, to pay the educational expenses incurred or to be incurred by the respondent to the tune of Rs.1,18,400/-. Before the trial court, neither the appellant nor the respondent has filed any documentary evidence in support of their respective pleadings. It is also not disputed by the appellant that the sum of Rs.1,18,400/- is not the actual expenses incurred by the respondent or such amount claimed by the respondent is exorbitant and not borne on records. In such circumstances, the trial court, taking into account the fact that the appellant, as father of the two minor children, is morally and legally bound to pay the educational expenses of the children, had allowed the application as prayed for. We do not find any illegality or perversity in such order passed by the Family Court. Therefore, we confirm the Order dated 20.12.2017 passed in I.A. No. 1621 of 2016 in O.S. No. 136 of 2015 on the file of IV Additional Family Court, Chennai. Consequently, the Civil Miscellaneous Appeal is dismissed. No costs. The court below is directed to take up the suit in O.S. No. 136 of 2015 filed by the appellant for restitution of conjugal rights and dispose it of on merits and in accordance with law, within a period of six months from the date of

receipt of a copy of this judgment. Both the appellant and the respondent are directed to extend their cooperation to the court below to dispose of the suit within the time stipulated in this judgment.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

rsh

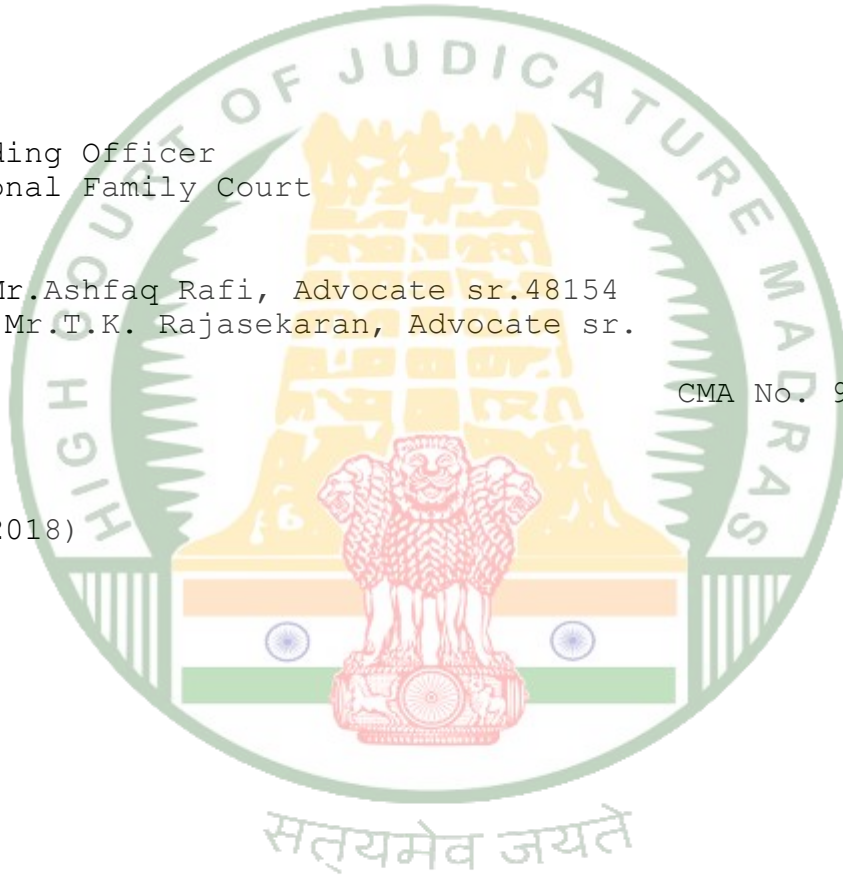
To

The Presiding Officer
IV Additional Family Court
Chennai.

+1 cc to Mr.Ashfaq Rafi, Advocate sr.48154
+ 1 cc to Mr.T.K. Rajasekaran, Advocate sr.

CMA No. 965 of 2018

SS(CO)
EU(13/08/2018)



WEB COPY