

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
05.09.2018

Delivered on
26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
CMA.No.1640 of 2018
and
CMP.No.13017 of 2018

J.Santhosh

... Appellant /Respondent

-vs-

M.Banupriya

... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 to set aside the order passed by the learned III Additional Family Court, at Chennai made in IA.No.2371 of 2016 in OP.No.1149 of 2015 dated 20.02.2018.

For Appellant : Mrs.Lita Srinivasan
for M/s.Kingsly Solomon.J

For Respondent : Mr.R.Ramesh

J U D G M E N T

R.SUBRAMANIAN, J.

This appeal is at the instance of the husband against the interim order of maintenance granted by the Family Court at Chennai, directing him to pay a sum of Rs.15,000/- per month made under Section 24 of the Hindu Marriage Act.

2. The husband had filed the Original Petition in FCOP.No.1149 of 2015 seeking divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act. The marriage between the parties took place on 01.09.2011 and it is claimed by the husband that the respondent, wife had treated him with cruelty. It is claimed that the wife without the knowledge of the husband aborted the pregnancy. It is also contended that the respondent, wife had illicit intimacy with one Kamal, who had been her friend even before the marriage. On the above allegations as well as other allegations, the husband sought for divorce.

3. The application is being resisted by the wife on various contentions and she also had filed OP.No.2978 of 2015 seeking restitution of conjugal rights.

4. We are not dwelling deep into the allegations and counter allegations made by the parties in the main petition, inasmuch as the order challenged before us is only the order granting interim maintenance and the challenge is to the quantum alone. While the wife who is seeking interim maintenance would claim that the husband is permanently employed and he is earning about Rs.50,000/- per month is refusing to maintain her, it is the case of the husband that he is only drawing a salary of Rs.16,260/- per month as of now. Since, the dispute related to the income of the husband, we had directed him to produce the latest salary certificate.

5. In response he has produced the appointment order dated 12.03.2010, which shows that he was offered an appointment at a salary of Rs.15,000/- by M/s.Technosoft Global Services Private Limited. Subsequently, it is seen that he has left the services of M/s.Technosoft Global Services Private Limited and has joined the services of M/s.Nebula Computers Private Limited on a monthly salary of Rs.16,432/-. It is now stated that the husband has left the services of M/s.Nebula Computers Private Limited also and he has now joined Wipro on a monthly salary of Rs.15,847/-. The credit advice for the month of August 2018 has been produced which shows the amount deposited towards salary as Rs.15,847/-.

6. Contending that the husband is earning only a sum of Rs.15,847/-, Mrs.Lita Srinivasan, learned counsel appearing for M/s.Kingsly Solomon would submit that the Family Court was not right in directing payment of Rs.15,000/- towards maintenance. The Family Court has reached the conclusion that the husband should pay a maintenance of Rs.15,000/- on an assumption that the husband is working in Wipro and drawing a salary of Rs.50,000/- per month. Though, the husband has raised a plea that the wife is an M.Sc., in Medical Physiology and she has been working with her father who is a Doctor practicing Siddha medicine in Tiruvallur, the Family Court had directed payment of Rs.15,000/- towards maintenance.

7. Mr.R.Ramesh, learned counsel appearing for the respondent, wife would vehemently contend that even a sum of Rs.15,000/- is wholly insufficient for the wife to support herself.

8. The interim maintenance to be granted under Section 24 of the Act should be in relation to the income of the husband as well as the status of the husband. If the husband is drawing a

salary of Rs.15,000/-, he cannot be directed to pay Rs.15,000/- as maintenance. After all, the husband has to maintain his aged parents also. We are therefore of the opinion that the interim maintenance awarded by the Family Court needs to be reduced. Admittedly, the wife/ respondent is living with her parents and therefore she is not required to avail the rental accommodation.

9. Considering all the above factors as well as the fact that the husband is drawing only about Rs.15,847/- as salary, we are of the considered opinion that the interim maintenance awarded by the Family Court could be reduced to Rs.8,000/- per month. The interim maintenance is payable from the date of petition before the Family Court 26.08.2016 till disposal of the Original Petition by the Family Court. The maintenance shall be paid on or before fifth of every English calendar month as directed by the Family Court. Arrears of maintenance should be paid within a period of two months from the date of receipt of the copy of this judgment.

10. Therefore, the appeal is partly allowed, modifying the order of maintenance granted by the Family Court. However, there will be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dsa

To

The III Additional Judge,
Family Court, Chennai.

+1cc to Mr. R.Ramesh, Advocate, S.R.No. 66432

+1cc to Mr. Kingston Solomon, Advocate, S.R.No. 66608

CMA.No.1640 of 2018

NM(CO)
GN(30/10/2018)

WEB COPY