

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A. No.2444 of 2018
and
C.M.P.No.18608 of 2018

Vinoth ... Appellant/Petitioner

-vs-

Saraswathi ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984 to set aside the order and decree dated 31.05.2018 passed by the learned IV Additional Family Judge, Family Court, Chennai in IA.No.2376 of 2017 in OP.No.3544 of 2015.

For Appellant : Ms.A.Athishayaa

For Respondent : Mr.Guru Dhananjay

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The husband who suffered an award for payment of interim maintenance at Rs.7,500/- per month is the appellant.

2. The main proceeding in HMOP.No.3544 of 2015 was filed by the husband seeking divorce on the ground of Cruelty. Pending the said Original Petition, the respondent wife sought for interim maintenance of Rs.10,000/- per month for herself and her two children.

3. The husband would resist the said claim contending that he is only working as a temporary driver and he does not have means to pay Rs.10,000/- per month. He would also claim that the wife is working and earning a sum of Rs.15,000/- per month and that she is residing along with his parents in their house.

4. The Family Court which heard the application for interim maintenance concluded that the appellant husband is a qualified professional driver and therefore he would definitely earn more than Rs.20,000/- per month. The Family Court also found that the respondent wife is un-employed and she is also having two children who are born out of the wedlock. On such finding the Family Court granted a sum of Rs.7,500/- per month as interim maintenance and Rs.10,000/- as litigation expenses. Aggrieved, the husband is on appeal.

5. We have heard Ms.A.Athishayaa, learned counsel for the appellant and Mr.Guru Dhanansay, learned counsel for the respondent.

6. The learned counsel for the appellant would contend that the Family Court erred in directing the appellant to pay a sum of Rs.7,500/- per month in the absence of any proof on his income. She would also submit that the wife is in occupation of the house owned by his father and that he is employed only as a temporary driver earning about Rs.5,000/- per month.

7. Contending contra, Mr.Guru Dhananjay, learned counsel appearing for the respondent wife would submit that the appellant is a call taxi driver and earning more than Rs.20,000/- per month. The wife apart from maintaining herself has to maintain two minor children, therefore, according to him, the quantum of interim maintenance awarded by the Family Court is just and reasonable.

8. We have considered the rival submissions. The fact that the respondent wife is living with her in-laws and children in the house of father-in-law is admitted. However, as the husband, the appellant is liable to maintain his wife and minor children. We are therefore of the considered opinion that the appellant husband can be directed to pay a sum of Rs.7,000/- per month as interim maintenance pending disposal of the above Original Petition before the Family Court. We made this reduction of Rs.500/- considering the fact that the wife is being accommodated in her father-in-law's house free of rent.

9. In view of the above, the interim maintenance directed to be paid is reduced to Rs.7,000/- per month. The direction to pay Rs.10,000/- towards litigation expenses is confirmed. The appellant husband shall pay the arrears of maintenance and the litigation expenses within a period of 8 weeks from the date of receipt of a copy of this judgment in two equal monthly installments. Future monthly maintenance shall be paid on or before 10th of every succeeding months.

10. In fine, the appeal is partly allowed as indicated above. There will be no costs in this appeal. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

dsa

To

The IV Additional Principal Judge,
Family Court, Chennai.

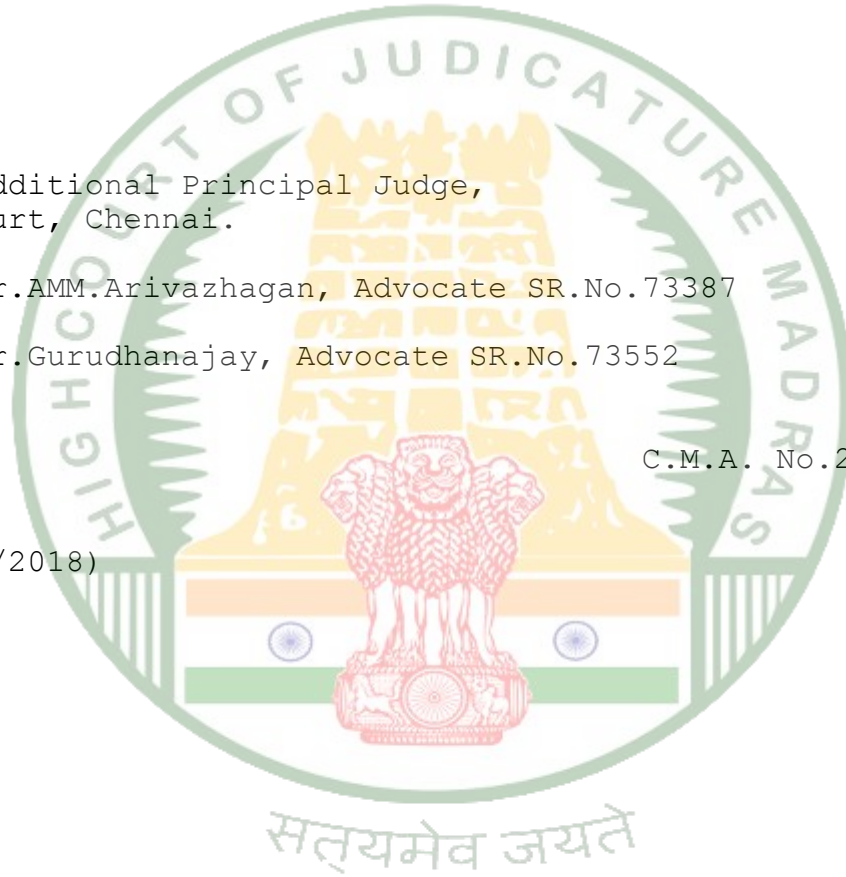
+1cc to Mr.AMM.Arivazhagan, Advocate SR.No.73387

+1cc to Mr.Gurudhanajay, Advocate SR.No.73552

C.M.A. No.2444 of 2018

EV (CO)

GMV (28/11/2018)



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