

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

F.C.A.No.171 OF 2005

JUDGMENT: (oral)

(Per Hon'ble Sri Justice SURESH KUMAR KAIT)

Vide the present appeal, the appellant has challenged order dated 12.08.2005 passed in O.S No.134 of 2003 by the Judge, Family Court, Hyderabad, whereby the learned trial Court has directed the appellant herein to pay an amount of Rs.5,000/- per month to the respondent herein from the date of suit and the appellant was directed to pay the costs proportionately.

02. The present appeal is filed on the ground that the Court below ought to have taken into consideration that the application for maintenance filed by the mother of the respondent before Family Court at Bangalore was dismissed. The said order having been passed on merits would operate *resjudicata* under Section 11 of CPC.

3. Since the respondent is settled in the United States appeared none on her behalf. Moreover, on perusal of order dated 10.10.2002 in M.C No.902 of 2000 passed by the Principal Judge, Family Court, Bangalore, whereby, observed as under:

"7. Now the respondent has come up with this application praying interim maintenance of Rs.20,000/- per month and litigation expenses of Rs.20,000/-. The contention of the petitioner is that the respondent is gainfully employed in US and she is getting monthly salary of about \$ 5000. According to his arguments, when the petitioner filed an application for the custody of the child, to overcome that she has filed this application praying for interim maintenance. It is not in dispute that at present the respondent is not in India, wherein she is in USA. Further by going through the affidavit of the respondent to IA7, which was an

application, filed under Section 151 CPC praying for dispensing her appearance and her child before this Court. In that affidavit which was said to be sworn on 12.08.2002 shows that in that affidavit, her occupation is mentioned as temporary service presently residing at MI, USA. So by this, it clearly discloses that the respondent is employed in USA and she is earning. Nowhere she has disclosed her salary particulars even though she is in service in USA. Further in that affidavit when the Court directed the respondent to produce the child before the Court, to that she has stated that she had already spent substantially for her recent trip to India and therefore to spend again a sum of Rs.1,07,800/- for the to & fro fares for her child and herself as beyond her financial means. Further in this affidavit she has also sworn that her daughter accompanied her to USA on 11.06.2002 and now her daughter is with her and she is seeking her admission to the School Care Centre and she will be admitted no sooner the requisite formalities are complied with. Hence considering these circumstances, the respondent is gainfully employed in USA and thereby she is not entitled for interim maintenance as prayed for and also litigation expenses at this stage. When she is employed in USA, nothing prevented her to disclose her salary particulars, but she has not disclosed that in her application also. Under such circumstances, she is not at all entitled for interim maintenance as prayed for in I.A.6. Accordingly, I answer this point.”

4. Since the maintenance sought by the mother of the respondent has already been dismissed in M.C.No.902 of 2000 mentioned above, the learned Judge has erred in passing the order in O.S.No.134 of 2003.

5. In view of above, we hereby set aside the order dated 12.08.2005 passed in O.S.No.134 of 2003. Consequently, this F.C.A. is allowed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SURESH KUMAR KAIT, J.

T. AMARNATH GOUD, J.

Date: 06 -09-2018

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