

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.2407 of 2015

S.Hemalatha

W/o.R.Dhanasekar,

D/o.N.L.Srinivasan,

327-1/139, Sri Ram Nagar,

Puthumariamman Koil Street,

Veeranam Main Road,

Salem 636 001.

... Appellant

Vs

R.Dhanasekar,

S/o.Late V.Ramadoss,

116/W-13, Bazaar Street,

Omalur 636 455,

Salem District.

... Respondent

PRAYER : Appeal against the order dated 26.08.2015, made in I.A.No.143 of 2014 in F.C.O.P.No.503 of 2012 on the file of the Family Court, Salem.

For Appellant : Mr.T.Murugamanickam
Senior Counsel
for Ms.Zeenath Begum

For Respondent : Mr.R.Murugabharathi

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been filed against the suo motu order dated 26.08.2015 passed by the Family Court under Section 152 of CPC, modifying the earlier original order dated 22.01.2015 in I.A.No.143 of 2014 in F.C.O.P.No.503 of 2012, directing the respondent/husband to pay a sum of Rs.10,000/- per month to the petitioner/wife and children as interim maintenance and Rs.5,000/- towards litigation expenses from the date of petition till the date of disposal of the main FCOP, to the effect that the order was intended only from the date of order not from the date of petition.

2.Heard, Mr.T.Murugamanickam, learned senior counsel appearing for the appellant and Mr.R.Murugabharathi, learned counsel appearing for the respondent/husband.

3.The appellant and the respondent are husband and wife. The respondent filed F.C.O.P. No.503 of 2012, for divorce against the appellant on the file of Family Court, Salem. Pending disposal of the above petition, I.A.No.143 of 2014 has been taken out by the appellant, seeking interim maintenance. Both the parties arrived at a settlement based on which, the Family Court directed the respondent to pay a sum of Rs.10,000/- per month from the date of the petition till the disposal of the main F.C.O.P. No.503 of 2012 and a sum of Rs.5,000/- towards litigation expenses. That award was varied suo motu, invoking Section 152 of the CPC to the effect that the liability of payment of compensation is from the date of the order and not from the date of petition.

4.A perusal of the original order dated 22.01.2015 would make it very clear that the trial Court directed the respondent only to pay the amount from the date of the petition. Usually, from the date of petition only the Courts would order for maintenance. However, for the reasons best known to it, the trial Court suo motu varied the order stating that the Court's intention is only to order payment from the date of passing of order. That apart, once a party files a petition for maintenance, on that date onwards only, the party is entitled for maintenance, if it is proved according to law. Therefore, subsequent order dated 26.08.2015 is set aside and the original order dated 22.01.2015 is restored.

5.The respondent is directed to pay the amount as per the trial Court's order dated 22.01.2015 to the appellant within a period of four weeks from the date of receipt of a copy of this order.

The appeal is allowed in the above terms. Taking into consideration that the F.C.O.P has been filed during 2012, it is appropriate to direct the trial Court to dispose of the matter as expeditiously as possible. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sai

To

The Family Court,
Salem.

+1 cc to M/s.Zeenath Begum, Advocate Sr.No.2425

+1 cc to M/s.R.Murugabharathi, Advocate Sr.No.2266

C.M.A.No.2407 of 2015

SAI (CO)
CSL/25.03.2019