

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

C.M.A. No. 1125 of 2018

1.Nirmala @ Aisha Afsar Riyaz
2.Minor Alia Afsar Ebithihar
3.Minor Aafia Afsar Ebithihar
(Minors 2 & 3 rep. by 1st appellant) ...Appellants

Vs.

Afsar Riyaz Ebithihar ... Respondent

Prayer: Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and final order dated 01.11.2017 passed in I.A.No.2008 of 2016 in O.S. No. 219 of 2015 on the file of the III Additional Family Court, Chennai.

For Appellants : Ms.V.S.Usha Rani

For Respondent : No appearance

JUDGMENT

(Delivered by M.M.Sundresh,J.)

The appellants are the wife and the children of the respondent. Pending the suit filed in O.S. No.219 of 2015 for divorce by the first appellant, an application was filed in I.A. No. 2008 of 2016 seeking interim maintenance. In the application filed, the appellants made the following averments:-

"9.The respondent is also a director of "M/s. Abascus Logistics Pvt. Ltd in the very same address. The properties of the respondent to the knowledge of this petitioner are listed below:

- 203-B, A Wing, Lady Ratna Towers Dainik Shiver Marg, Gandhi Nagar, Upper Worli, Worli Mumbai - 400018
- Orchid spring House - 54, Water Canal road Korattur, Chennai - 80

- Baba Towers - No:1, Sterling Avenue, Sterling Road, Nungambakkam, Chennai - 34.
- Padapai property - around 1.79 acre in S.No.527/1 and 527/1
- Mudichur property plot no.15, s.no.21, SK avenue Mudichur Village Tambaram - extent 3535 sq ft.
- House at Nandanam.
- Tambaram House - 15, Shanmugam street, Tambaram (West) Chennai 45
- The Respondent is owning around 6 racing Formula 4 cars, each worth about 7 lakhs to 10 lakhs.
- He also owns 3 karts and more each worth about 5 lakhs to 7 lakhs
- The respondents family is a partner in Bitamin Factory at Kancheepuram and cumbum Valley Winery at Cumbum, Kerala.

10. The respondent has multiple bank accounts and substantial deposits. Though he had earned money, properties were purchased in the name of his parents and grandmother. The respondent is duty bound to place the assets that belong to his family. The respondent is leading an opulent life. The properties held by him is the testimony of his stature in society. He takes pride in patronizing women of loose morals and characters. I have accessed photographs of the respondent with women, both married and divorced."

2. In the counter affidavit filed, the respondent did not specifically deny the means and financial status, as referred above, but only stated that some amount has already been paid and the allegation that the first appellant was made to work is not correct since there are more than three servants at home to take care of the maintenance and house keeping. It would be appropriate to refer the necessary averments made in the counter:-

"10.In the Respondent's parental home there are more than three servants to undertake cooking, washing and to perform even sundry items of work....

x x x

14. It is respectfully submitted that I am ready and willing to take my family into my fold and as such, the question of claiming interim maintenance to the tune of

Rs.2,00,000/- p.m. from August,2014 does not arise, if the Petitioner extends her support in an enthusiastic manner by over-shadowing her suspicious nature towards me, since I shower love and affection towards my wife and the two children and my life would never 'exit' without them. My motto and aim is to solve her problems in order to lead a happy matrimonial life. Even today, maintenance of their comfort has been provided by me - with substantial evidence - to the extent of parting in terms of money, even though i did lot of other things to my lovable wife and children.

15. It is respectfully submitted that I had acted in such a manner with utmost affection towards my wife and children. In this connection the following documents would vouchsafe the veracity of my statement:-

- i. Cheque No.001442 dated 21.03.2016 drawn on City Union Bank, Chennai in favour of CPS Junior Academy for Rs.1,13,000/- towards admission of my daughter 'Aalia Afsar Ebthihar' in CPS Junior Academy vide receipts bearing TF No.0199/AN/JA/2016-17 dated 21.03.2016 for Rs.18,750/- and OF No.0199/AN/JA/2016-17 dated 21.03.2016 for Rs.94,250/-
- ii. Receipt No.0199 dated 06.04.2016 for Rs.13,000/- towards purchase of Books, note book, uniforms, etc.
- iii. Receipt dated 14.02.2016 for Rs.13,430/- towards purchase of jewels for my wife on the eve of 'Valentines Day' by taking her to the jewelery shop;
- iv. Bill dated 06.07.2016 for an amount of Rs.18,425/- of 'Life Style' towards purchase of dress and other items for my wife and children on the eve of 'Ramzan'
- v. Bill dated 31.08.2016 of PENNMART TOYS (M) SDN BHD, Kula Lumpur towards purchase of two baby electric cars for my children worth Rs.15,000/- INR each;
- vi. Bill No.695 dated 26.10.2016 for Rs.1,132/- and Bill No.696 dated 26.201.2016 for Rs.2066/- of Anil Celebrations, Chennai towards purchase of crackers on the occasion of Diwali, as insisted by my spouse;
- vii. It is also pertinent to state that the Petitioner has been using the mobile number (7708363636) provided by me for her use and I

have been paying the said telephone bills all through up to now."

3. Heard the learned counsel appearing on behalf of the appellants. Despite service of notice, none appears on behalf of the respondent.

4. Learned counsel appearing for the appellants would submit that the fact that the respondent is a Director of two companies is not in dispute. He owns three karts and six luxury racing cars. He is a man of sufficient means. Though a sum of Rs.2 lakhs was sought for, the Court below awarded only Rs.30,000/-. No reasons have been adduced for granting only Rs.10,000/- each for maintenance. Therefore, the order of the Court below requires interference.

5. We find some force in the submission made by the learned counsel appearing on behalf of the appellants. The respondent did not deny his financial status. In fact, he has stated that he was ready and willing to give a good facility to the wife and the minor children. In such view of the matter, we are of the view that the Court below is not correct in granting Rs.10,000/- each of the appellants. There is no reason for doing so. The payments said to have been already made by the respondent would not absolve his liability to maintain his wife and minor children. In such view of the matter, we hereby increase the interim maintenance awarded by the Court below from Rs.10,000/- each per month to Rs.20,000/- each per month.

6. However, we make it clear that the arrears payable by the respondent from the date of the petition will have to be paid within a period of eight weeks from the date of receipt of a copy of this order and thereafter the interim maintenance will have to be paid every month as ordered above on or before first week of every month starting from the month of April, 2019.

Accordingly, the appeal stands allowed to the extent as indicated above. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm

To:-

The III Additional Principal Judge,
Family Court,
Chennai

+1 cc to M/s.V.S.Usha Rani, Advocate, S.R.No.27427

C.M.A. No. 1125 of 2018

RR(CO)
SSM(22/07/2019) .



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