

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2291 of 2019

and

C.M.P.No.10080 of 2019

Jagan

... Appellant

Vs

Jancy

..Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the Fair Order and Decreetal Order dated 06.02.2019 in I.A.No.1000 of 2018 in M.O.P.No.193 of 2018, on the file of the Family Court at Pondicherry.

For Appellant : Mr.N.K.Srinivasan

J U D G M E N T

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

The appeal has been preferred by the husband aggrieved over the award of Rs.10,000/- towards maintenance for the respondent and their child.

2.The appellant got married to the respondent on 19.05.2016.

Out of the wedlock, a child was born. Subsequently, disputes arose between the parties and therefore, they are living separately.

3.Alleging that the appellant is not taking his wife/respondent herein to the matrimonial home, a petition under Section 9 of the Hindu Marriage Act, 1955 has been filed by the respondent/wife for restitution of conjugal rights. The said petition is being contested by the appellant.

4.In the petition to restore the conjugal rights, an application in I.A.No.1000 of 2018 has been taken out by the respondent seeking maintenance of a sum of Rs.15,000/- per month to the respondent and her son under Section 24 of the Hindu Marriage Act, 1955. On contest, the said petition was allowed partly awarding a sum of Rs.10,000/- towards maintenance and Rs.1,000/- towards litigation expenses. The said order is being challenged before this Court.

5.Mr.N.K.Srinivas, learned Counsel for the appellant very strenuously and effectively argued that awarding a sum of Rs.10,000/-

to the respondent and the child is on the higher side. He particularly relied upon the Judgment of the Hon'ble High Court of Madhya Pradesh in "Smt.Mamta Jaiswal Vs. Rajesh Jaiswal" dated 24.03.2000 to stress the point that the respondent is highly qualified and she is an M.C.A. graduate who is not willing to go for work and therefore, she is not entitled to any maintenance. He would further submit that the appellant is earning only a sum of Rs.33,000/- out of which Rs.10,000/- towards maintenance is on the higher side.

6.This Court is unable to agree with the contention made by the learned Counsel for the appellant. The appellant was working as a Senior Engineer in the Department of Process in Chemfab Alkalies earning a sum of Rs.35,000/- per month which fact is not denied by the appellant.

7.When out of the marriage, a son was born and both of them are living separately, it is not only the legal duty but also the moral responsibility of the appellant to maintain the respondent and their child. It is not as if the appellant has filed divorce petition. It is the respondent

who has chosen to file a petition under Section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. That itself, would show that wife is craving for the company of the husband herein.

8.In these circumstances, the award of Rs.10,000/- in favour of the respondent is very reasonable and therefore, the appeal is liable to be dismissed and accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9.It is open to the appellant to take out a petition seeking visitation rights as it is alleged that his visitation right to see his son has been prevented by the respondent. On filing of such application, the Trial Court has to expeditiously decide the matter at the earliest.

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(N.K.K.,J.)

(A.Q.,J.)

29.08.2019

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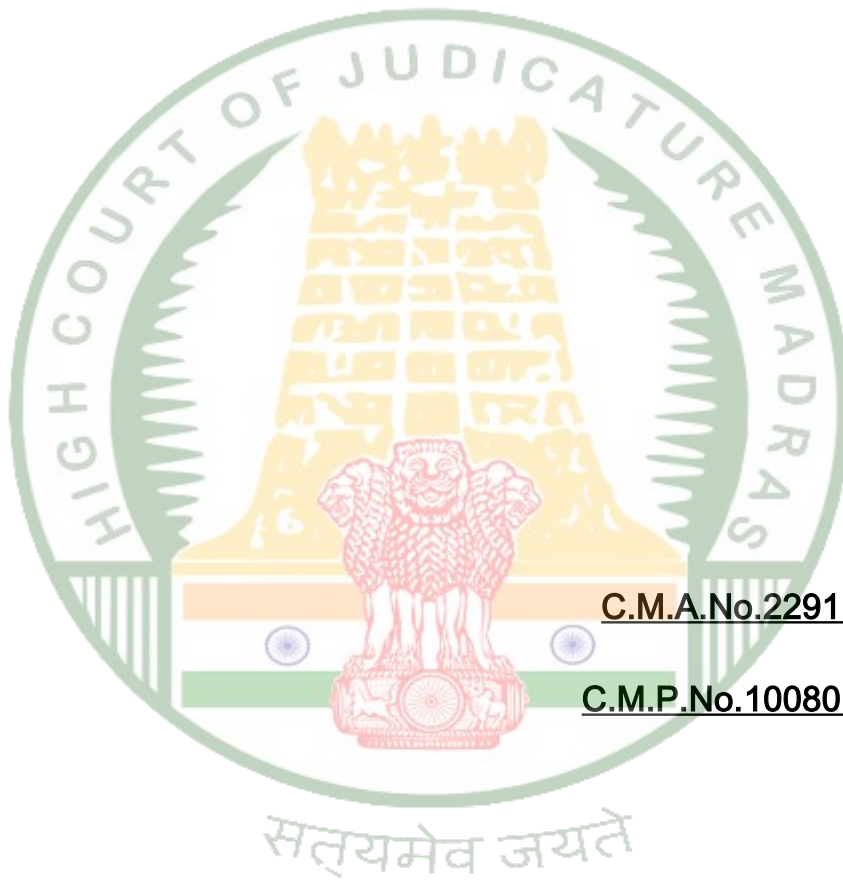
The Family Court,
Pondicherry.



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ABDUL QUDDHOSE, J.

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