

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2673 OF 2019

KIRAN@KIRAN KUMAR

...

Appellant

Vs

SNEHA@SNEHA J SHAH

....

Respondent

PRAYER: Civil Miscellaneous Appeal filed to set aside the order and decretal order dated 10/01/2019 in IA.NO.5195/2018 in OP.NO.1907 of 2017 passed by the learned VI Additional Principal Family Judge Family Court, Chennai.

For appellant : Mr.Manoj Sreevalsan

For respondents : Ms.Samira S.Shah

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The challenge in this Civil Miscellaneous Appeal is to the order dated 10 January 2019 in I.A.No.5195 of 2018 in O.P.No.1907 of 2017, fixing interim maintenance at the rate of Rs.10,000/- per month.

2. The proceedings in O.P.No.1907 of 2017 was initiated by the appellant before the Family Court at Mangalore. It was transferred to the file of Principal Family Judge, Chennai and renumbered as O.P.No.1907 of 2017.

3. The appellant prayed for a decree declaring the marriage as null and void. The original petition was opposed by the respondent by filing counter.

4. Before the Family Court, the respondent filed an interlocutory application in I.A.No.5195 of 2018 claiming

interim maintenance. Even though the claim was for a sum of Rs.37,500/-, only a sum of Rs.10,000/- was awarded by the Family Court. It is the said order which is impugned in this appeal.

5. We have heard the learned counsel for the respective parties.

6. The only question that arises for consideration is as to whether the Family Court was justified in fixing the monthly maintenance at the rate of Rs.10,000/- per month.

7. The respondent made a claim for maintenance on the ground that she has no independent source of livelihood. The respondent contended that her monthly expenses would be in the range of Rs.35,000/- to Rs.40,000/- and as such, she prayed for an order fixing monthly maintenance at the rate of Rs.35,000/-. The appellant in his counter affidavit filed before the Family Court contended that he was working as a Salesman at Bhagwati Ceramics and was receiving monthly salary of Rs.11,000/-. He is living in a joint family and as such, it would not be possible to pay monthly maintenance as per the claim made by the respondent. The Family Court, Chennai, without considering the means of the appellant, simply passed an order directing him to pay maintenance at the rate of Rs.10,000/- per month.

8. Even before this Court, the appellant maintained that he is only a a salesman and his monthly salary is only a sum of Rs.11,000/-. The said fact is not seriously disputed by the respondent. There are absolutely no documents to show that the appellant has been receiving a higher salary and it would be possible for him to pay maintenance at the rate of Rs.10,000/-.

9. We have perused the entire materials available on record. We are of the view that interest of justice would be sub-served by directing the appellant to pay maintenance at the rate of Rs.7,500/- p.m. The arrears of maintenance effective 20 August 2018 should be paid within a period of four weeks. The appellant shall also pay the monthly maintenance at the rate of Rs.7,500/- in addition to the arrears.

10. The learned counsel for the appellant submitted that the appellant is obliged to come very often to Chennai from Mangalore and as such, outer time limit should be fixed for the disposal of the original petition. We give liberty to the appellant to file appropriate application before the Family Court to dispense with his presence for the time being with direction to appear on the effective date of hearing.

11. The Civil Miscellaneous Appeal is allowed in part as indicated above. No costs. Consequently, C.M.P.No.13235 of 2019 is closed.

Sd/-
Assistant Registrar(CS IV)

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tar Sub Assistant Registrar

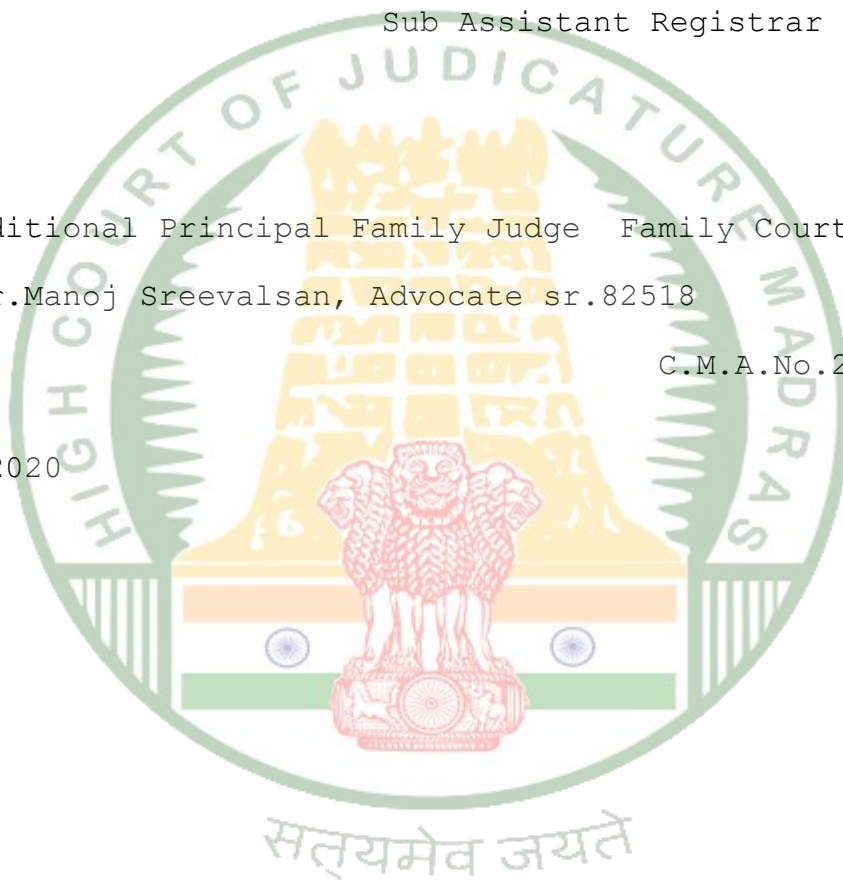
To

The VI Additional Principal Family Judge Family Court, Chennai.

+1cc to Mr.Manoj Sreevalsan, Advocate sr.82518

C.M.A.No.2673 OF 2019

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