

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. No. 569 of 2018

R.Lokeshwaran

... Appellant/Petitioner

Vs.

P.Nandhini

... Respondent/Respondent

Prayer: Appeal filed under Section 19(1) of the Family Courts Act, 1984 against the fair and decreetal orders dated 15.11.2017 in IA No.651/2017 in O.P.No. 2202/2016, on the file of the IV Additional Family Court, Chennai.

For Appellant : Mr.V.Jeevagiridharan

For Respondent : Mr.K.Elango

JUDGMENT

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

The appellant filed a divorce petition in O.P.No. 2202 of 2016 under Section 12(1) of the Hindu Marriage Act, 1955 on the ground that the respondent was incapable of consummation of marriage. Pending the aforesaid petition, the respondent filed an application in I.A.No.651 of 2017, seeking interim maintenance for a sum of Rs.15,000/-. The Family Court, awarded a sum of Rs.7,000/- in favour of the respondent. Challenging the same, the present appeal has been filed.

2. The learned counsel appearing for the appellant submitted that his take home salary is very meager. The main original petition itself has been dismissed. Thereafter, the appellant filed another petition seeking divorce on the ground of desertion and cruelty. Therefore, the appeal will have to be allowed with liberty to the respondent to file an application in the pending matter.

3. The learned counsel appearing for the respondent submitted that the appellant is working as Assistant in a Co-operative Institution and drawing a sum of Rs.25,000/-. A mere dismissal of the main original petition cannot be a ground to continue the fruits of the orders passed by this Court. The conditional order imposed has also not been complied with. Similarly, the subsequent petition filed will not take away the right accrued. Hence, this petition will have to be dismissed.

4. The facts are not in dispute - they are, with respect to the status of the appellant, dismissal of the earlier O.P.No.2202 of 2016 and the non-compliance of the conditional order passed by this Court while granting stay. It is trite that the order directing the party to pay an interim maintenance has the trappings of the decree and, therefore, the same can be executed. This has got nothing to do with the main case. Therefore, the dismissal of the main original petition in O.P.No.2202 of 2016 on merit would not dis-entitle the respondent from getting the fruits of the order passed in I.A.No.651 of 2017. Further, the filing of the subsequent petition also would not cause any damage to such a right. After all, the respondent sought for a sum of Rs.15,000/- per month towards the interim maintenance and the Court ordered only Rs.7,000/- per month, which, in our considered view, is very reasonable and fair.

5. Thus, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected C.M.P.No. 5025 of 2018 is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssm
To:

The IV Additional Principal Judge,
Family Court, Chennai.

+1cc to Mr.K.Elango, Advocate SR.100174
+1cc to M/s.V.Jeevagiridharan, Advocate SR.100294 (04/03/2020)

C.M.A.No.569 of 2018

EV(CO)
CB(06/01/2020)