

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM

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

C.M.A.No.4677 of 2019
and C.M.P.No.26451 of 2019

P.Praveen Kumar ... Appellant/Respondent

Vs.

V.Sakthi Lakshmi ... Respondent/Petitioner

Appeal filed under Section 19 of the Family Court Act, 1955 to set aside the order and decree dated 20.03.2019 in I.A.No.5436 of 2018 in O.P.No.1935 of 2018 on the file of the IV Additional Family Court at Chennai.

For Appellant	..	Mr.M.Naraayanaswamy
For Respondent	..	Mr.C.R.Malarvannan

JUDGMENT

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

The appellant is the petitioner in O.P.No.1935 of 2018 on the file of the IV Additional Family Court, Chennai. The aforesaid petition has been filed for divorce. Pending the said petition, the respondent being the wife of the appellant, filed I.A.No.5436 of 2018 seeking interim maintenance of Rs.50,000/- per month. The Family Court, after taking note of the salary of the appellant, directed him to pay a sum of Rs.18,000/- per month along with Rs.25,000/- towards litigation expenses . Challenging the same, the present appeal has been filed.

2.Learned counsel appearing for the appellant submitted that the Family Court has committed an error in awarding a sum of Rs.18,000/- per month, after accepting the contention that the appellant is only receiving Rs.60,000/- per month by way of salary. The Family Court has also given a finding that there is no material to substantiate the allegations and averments made

by the respondent with respect to the other properties owned by him and the income accruing there from. Hence the order of the Family Court requires interference.

3.Learned counsel appearing for the respondent submitted that though the Family Court has stated that there is no material to substantiate the existence of family properties and the income accrued from the same, the fact remains that there are other properties available and the respondent is not expected to cull out and collect evidence for seeking interim maintenance. In any case, the Family Court has awarded only Rs.18,000/- out of the salary of Rs.60,000/- as recorded by us. Hence the appeal will have to be dismissed.

4.The Family Court took into consideration the fact that the appellant was receiving a sum of Rs.60,000/- per month and on that basis, without going into the other averments with respect to the properties owned by him, it fixed the interim maintenance. There is no dispute with respect to the status of the parties. Therefore, we are of the view that the interim maintenance awarded by the Family Court cannot be stated to be wholly erroneous. After considering the facts of the case, particularly the fact that the appellant is receiving only Rs.60,000/- per month, we are inclined to modify the order of interim maintenance from Rs.18,000/- per month to Rs.15,000/- per month. In all other respects, the order of the Family Court stands confirmed.

5.Insofar as the litigation expenses, we do not want to modify the same as only Rs.25,000/- by way of lumpsum has been ordered. We have no difficulty in holding that the respondent is entitled for legal assistance.

6.At this juncture, learned counsel appearing for the parties submitted that mediation is pending. While we make it clear that this order will not stand in the way of the Family Court from proceeding further, the said mediation will have to be completed within a period of twelve weeks from the date of receipt of a copy of this judgment as the maximum outer time limit. During the pendency of the mediation, the appellant will have to comply with the payment of interim maintenance from the month of October 2019 onwards and 50% of the arrears will have to be paid. Depending upon the final outcome of the mediation, the remaining arrears will have to be paid after the time limit fixed for its completion, within a further period of four weeks.

7.The Civil Miscellaneous Appeal is partly allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

The Presiding Officer,
IV Additional Family Court, Chennai.

2.The Section Officer
VR Section High Court Madras

+1cc to Mr.CR.Malarvannan Advocate, S.R.No.102450
+1cc to Mr.M.Narayanasamy, Advocate, S.R.No.102718

C.M.A.No. 4677 of 2019

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