

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 2220 of 2019

and

C.M.P. No. 14365 of 2019

R. Sridharan

... Petitioner

-Vs-

S. Kalpana

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 28.03.2019 in I.A. No. 95 of 2019 in H.M.O.P. No. 133 of 2017 passed by the learned Sub-ordinate Judge at Poonamallee.

For Petitioner : Ms. T. Ramadevi

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 95 of 2019 in H.M.O.P. No. 133 of 2017 on the file of the learned Sub-ordinate Judge at Poonamallee, by order dated 28.03.2019

2. Before the Court below, the husband filed the main HMOP for dissolution of marriage, wherein the respondent / wife seems to have already filed an application to grant interim maintenance.

3. Only in that context, the present I.A. No. 95 of 2019 was filed by the petitioner / husband under Order XI Rule 16 of the Civil Procedure Code to issue summons to the respondent / wife's employer namely one Rajesh Gopinathan, Chief Executive Officer of TCS, Bangalore to produce the records pertaining to the employment of the respondent and her salary details.

4. Heard Ms. T. Ramadevi, learned counsel appearing for the revision petitioner who would submit that, in the very counter itself filed in the main HMOP, the respondent / wife has made an allegation against the petitioner / husband and his family members that, the family of the husband wants the respondent's salary i.e., wife's salary and more dowry from the respondent parents and that is the reason why, they allegedly harassed the respondent / wife. If it is the stand taken by the respondent / wife in the main counter itself to state that,

the family of the petitioner / husband wants the salary of the respondent / wife, then certainly it discloses that, she is working somewhere, then, in order to ascertain the employment status of the respondent / wife, those documents were required and that is the reason why, the said IA was filed by the petitioner / husband which is not considered in proper perspective and was rejected by the Court below erroneously, therefore the said order is required to be interfered with.

5. I have considered the said submission made by the learned counsel appearing for the revision petitioner and perused the materials placed before this Court.

6. Though notice has been served on the respondent / wife, the same has not been returned as unclaimed, therefore it can be construed as a service.

7. In the impugned order, the learned Judge has rejected the said application filed by the petitioner / husband, on the ground that,

once the relationship of the husband and wife is accepted and if at all the respondent is earning something and on that ground, if Husband submits that she is not entitled for any interim maintenance, that factum has to be proved only by the petitioner / husband by his own evidence. For the said purpose, he cannot expect the Court to collect evidence, therefore the said application has to be dismissed.

8. The said reasons given by the learned Judge through the impugned order, in the opinion of this Court, is justifiable and sustainable also.

9. As has been rightly held by the learned Judge, if at all the petitioner / husband has to prove the case that his wife / respondent is gainfully employed anywhere, that factum has to be substantially proved only by the husband and he cannot shift the burden from his shoulder and seek to collect evidence by seeking summons to the employer 'X' or 'Y' and asking to produce the records, salary certificate etc.,

10. Therefore, this Court feels that, the said order which is impugned herein does not require any interference from this Court.

11. At the same time, once the respondent / wife had taken a stand at para No. 9 of the counter in the HMOP, as has been pointed out by the learned counsel appearing for the revision petitioner that, the petitioner / husband family wanted the salary amount of the respondent / wife, certainly the said statement made by the respondent / wife can be taken into account and in this regard, judicial notice can be taken by the learned Judge while deciding the said issue of maintenance.

12. With these observations, this Court feels that, the Civil Revision Petition can be rejected, accordingly it is rejected. No costs. Consequently, connected Miscellaneous Petition is closed.

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19.11.2019

Index: Yes / No

Speaking order / Non speaking order

vji

R. SURESH KUMAR, J.

vji

To

The learned Sub-ordinate Judge
Poonamallee.



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