

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.2721 of 2017
and
C.M.P.No.15279 of 2017

V.Saravanan ...Appellant /Respondent/Respondent

.Vs.

Dhanalakshmi @ Gayathri ...Respondent/Petitioner/Petitioner

Appeal filed under Section 19 of the Family Courts Act, 1984 against the order dated 20.07.2017 in I.A.No.55 of 2016 in H.M.O.P.No.36 of 2015 on the file of the Family Court, Thiruvallur.

For Appellant : Mr.R.Dhamodaran

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the appellant. As there was no representation on behalf of the respondent on the earlier occasion, we have posted the matter today. Unfortunately, even today, there is no representation on her behalf.

2.The respondent filed a petition for restitution of conjugal rights in H.M.O.P.No.36 of 2015. Pending the said petition, she sought for interim maintenance under Section 24 of the Hindu Marriage Act. The Family Court awarded a sum of Rs.3,000/- per month towards maintenance in her favour. Challenging the same, the present appeal has been filed by the husband.

3.Learned counsel appearing for the appellant would submit that though the amount is meager, the fact remains that the respondent has suppressed the factum of her employment. An averment has been made that she was unemployed. The salary which she receives under Ex.C2 would show that she is receiving much higher amount than the appellant. She has been employed as a Senior Bailiff in the Principal District Court, Thiruvallur. Notwithstanding the same, the Court below awarded Rs.3,000/- per month towards maintenance. Therefore, the order requires interference.

4.We find considerable force in the submission of the learned counsel appearing for the appellant. Firstly, there is a clear suppression of fact in the affidavit filed by the respondent before the Court below. In para 3 of the affidavit, she has stated as follows:

3. I belong to a poor Adi Dravida family and now I have no substantial means to conduct case and run my life. But the respondent who married me on 27.06.2013 at Jayam Mahal Thirumana Maligai on my expenses is working in the State Transport Corporation and he is earning not less than Rs.40,000/- per month. My main petition in the HMOP No.36/2015 also kindly be considered as a part and parcel of this affidavit/petition.

5.The aforesaid submission is factually wrong. She has not disputed Exs.C1 and C2. The Court below has also accepted the abovesaid documents and nonetheless proceeded to award Rs.3,000/- per month towards maintenance to be payable by the appellant. The object of interim maintenance is for the sustenance of the wife when she is not able to have monthly income otherwise. The object cannot be defeated at the instance of a person, who has suppressed the fact of employment which indicates that she has been receiving more amount than her husband. For such a suppression, the Court cannot come to the aid. It is not as if in all cases, the wife is entitled for interim maintenance notwithstanding the fact that she is in a better position than her husband. We also note that no relief can be granted to the person who has approached the Court with unclean hands.

6.In such view of the matter, we are inclined to interfere with the order of the Court below. Accordingly, the impugned order dated 20.07.2017 in I.A.No.55 of 2016 in H.M.O.P.No.36 of 2015 stands set aside and this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

7.Taking into consideration the fact that H.M.O.P.No.36 of 2015 is pending for nearly four years, we direct the Family Court, Thiruvallur to dispose of the same within a period of six months from the date of receipt of a copy of this order.
mmi

Sd/-
Assistant Registrar(CS VIII)

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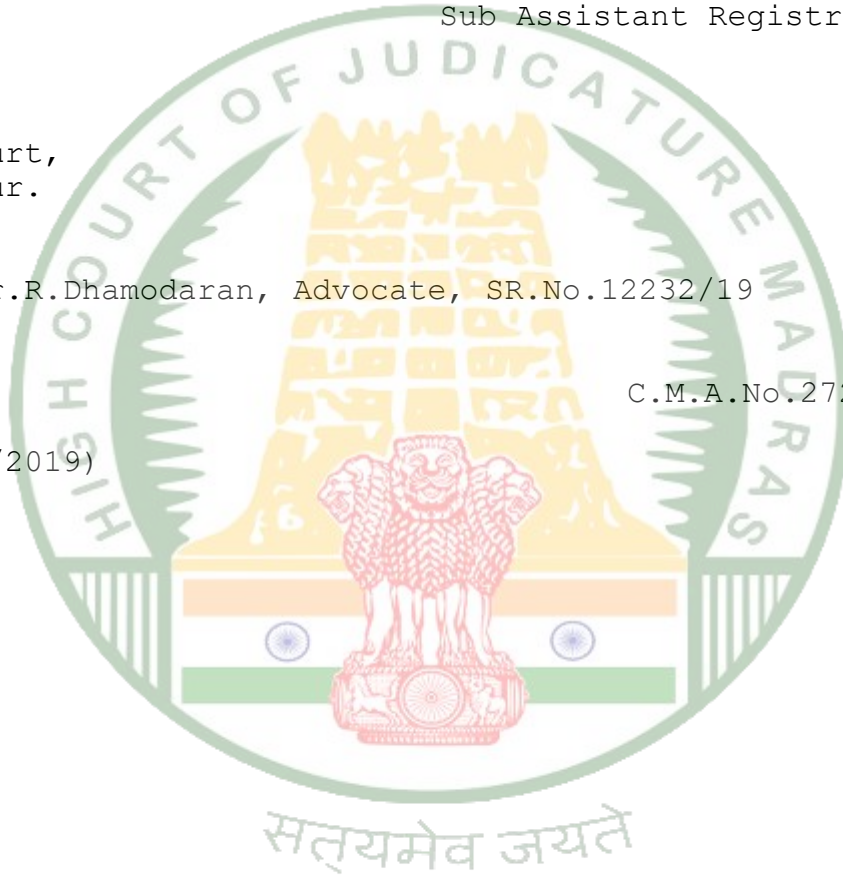
Sub Assistant Registrar

To
The Judge,
Family Court,
Thiruvallur.

+1cc to Mr.R.Dhamodaran, Advocate, SR.No.12232/19

C.M.A.No.2721 of 2017

Kak(12/06/2019)



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