

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

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

C.M.A.No. 4666 of 2019

S.Senthil Vijay Appellant/Respondent

Vs.

D.Keerthana Respondent/Petitioner

PRAYER : Appeal filed under Section 19 of the Family Court Act, 1984 against the fair and decreetal order dated 23.10.2019 passed in I.A.No.1771 of 2013 in O.P.No.3643 of 2009 on the file of the V Additional Family Court, Chennai.

For Appellant : Ms.V.Pushpa

For Respondent : Mr.V.Subramani

JUDGMENT

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

This appeal is preferred by the appellant aggrieved over the interim maintenance ordered by the V Additional Family Court, Chennai with effect from 27.06.2013 for a sum of Rs.10,000/- per month.

2. The learned counsel appearing for the appellant submitted that the arrears is huge. The respondent is gainfully employed. On the earlier occasion, there was an ex-parte order passed against the respondent. During the aforesaid period, the appellant has got re-married and begotten two children. These aspects have not been considered by the Family Court. Hence, the same requires interference.

3. The learned counsel appearing for the respondent submitted that the delay was only due to the appellant in disposing of the matter. The appellant also has got wrong address and that is the reason why it was wrongly noted as the respondent having been served. That is the reason why the petition filed to set aside the ex-parte order has been allowed. It is the respondent, who voluntarily brought to the notice of the Court about her employment. The appellant has been earning four times more than the respondent. This Court, will have to see the living style that was available during the marriage. As the amount awarded is not high and being meagre, no interference is required.

4. The fact that the respondent is employed gainfully is not the sole criteria. On a perusal of the order passed by the Family Court, we find that the respondent is earning about Rs.17,000/- as against the appellant earning Rs.1,32,000/-, which has been taken note of by the Family Court. Thereafter only, a sum of Rs.10,000/- per month has been ordered. Thus, we do not find any reason to interfere with the said order.

5. However, the other aspect is with respect to the arrears from 27.06.2013 onwards. It appears that the application was disposed of at the instance of the appellant. However, the position is that the appellant since re-married during the interregnum between the decree for divorce granted and the application for setting aside the same having been allowed. Now, the appellant has got two children. This factor is not taken note of by the Family Court. Thus, the arrears amount of Rs.7,70,000/- is modified to that of Rs.4,25,000/-. The aforesaid amount will have to be paid in two instalments i.e., the first instalment of Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only) will have to be paid within a period of four weeks from the date of receipt of a copy of this judgment. The remaining amount of Rs.2,00,000/- (Rupees Two Lakhs only) will have to be paid within a period of four weeks thereafter.

6. We make it clear that if the above said direction is not complied with, then the order passed by the Family Court would get restored.

7. Taking into consideration the fact that the Original Petition is pending from the year 2009 onwards, we direct the Family Court to dispose of the same within a period of four months from the date of receipt of the copy of this judgment.

8. In view of the above, the Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected C.M.P.No.26415 of 2019 is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

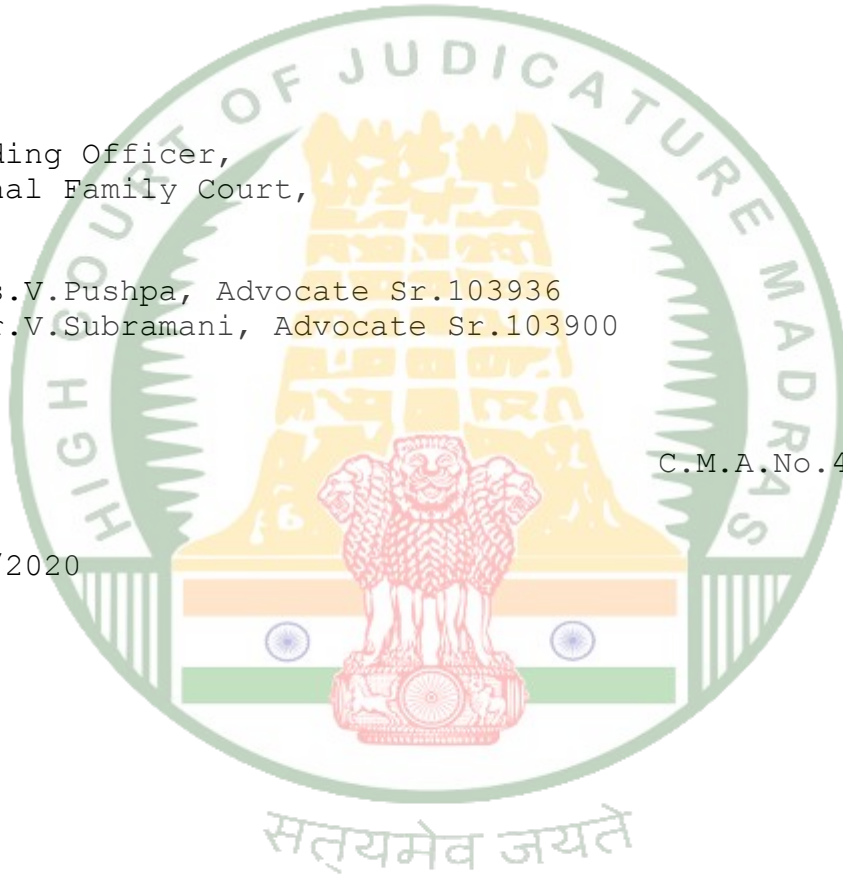
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To

The Presiding Officer,
V Additional Family Court,
Chennai.

+1cc to Ms.V.Pushpa, Advocate Sr.103936
+1cc to Mr.V.Subramani, Advocate Sr.103900

C.M.A.No.4666 of 2019

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