

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM

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

C.M.A.No.684 of 2018
and C.M.P.No.5956 of 2018

K.Ramesh Appellant/Respondent/Petitioner

Vs

A.Rajalakshmi ... Respondent/Petitioner/Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 to set aside the order, decreetal order dated 29.01.2018 made in I.A.No.3246 of 2013 in O.P.No.561 of 2011 on the file of V Additional Family Court, Chennai.

For Appellant .. Mr.P.R.Thiruneelakandan
For Respondent .. Mr.V.Shivalinkam

JUDGMENT

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

This appeal is preferred by the appellant, being the husband of the respondent, laying a challenge to the interim maintenance ordered by the V Additional Family Court, Chennai in I.A. No.3246 of 2013, by which, a sum of Rs.10,000/- per month has been ordered.

2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3.Learned counsel appearing for the appellant submits that the appellant is working as Office Assistant in JSR Builders on temporary basis. The respondent is gainfully employed elsewhere. The Family Court did not consider these aspects. While ordering interim maintenance, the Court will have to weigh the financial capacity of the parties followed by the need to pay interim

maintenance. This aspect has not been considered by the Family Court. The deposition of the respondent in C.C.No.3164 of 2012 would show that she was employed. Thus, considering the above, the appeal will have to be allowed.

4.Learned counsel appearing for the respondent submitted that the averments made by the appellant are not true. The appellant is working in Cinema filed apart from working with the top personnel. His family is very rich. His brother is employed abroad and his parents are also running tailoring business. It is not correct to state that the respondent is employed. Though a sum of Rs.30,000/- has been sought for, the Family Court ordered only Rs.10,000/-. The appellant has dragged on the matter from the year 2013 onwards by filing application after application. Thus, the appeal will have to be dismissed.

5.O.P.No.561 of 2011 has been filed by the appellant for divorce. I.A.No.3246 of 2013 has been filed by the respondent seeking interim maintenance. In this application, she has sought for Rs.30,000/- per month. The Family Court ordered Rs.10,000/-. It is this order, which is sought to be challenged before us.

6.Though the application has been filed in the year 2013, the appellant has been dragging on the matter by filing application after application. In fact, he has filed an application for additional document and for issuing subpoena. The Family Court recorded the approach of the appellant and thereafter proceeded to pass the order. Therefore, there is delay in disposing of the application at the behest of the appellant.

7. Though reliance has been made on the deposition rendered in C.C.No.3164 of 2012, we are not inclined to go into the same for disposing of this appeal for two reasons. Firstly, there is nothing to show that the deposition has been marked before the Family Court. Even assuming it is marked, it is only during chief-examination. Therefore, the entire deposition has not been marked as aforesaid. This deposition has been given much prior to the application filed seeking interim maintenance. The application for interim maintenance has been filed on 03.10.2013 and the deposition sought to be relied upon is much prior to the application. Therefore, there is nothing on record to show that at the time of filing the application and thereafter, the respondent was employed elsewhere. Though the respondent has sought for Rs.30,000/-, the Family Court has awarded only Rs.10,000/- as stated earlier. Similarly, we do not find any material to show that the salary certificate has been marked. Even otherwise, it is at best a piece of evidence, if

appreciated. We are conscious of the fact that we are at the stage of deciding what is the interim maintenance payable only.

8.However, we find that the appellant is not highly educated. Though he is stated to be acting in movies, it can, at best, be seasonal. In such view of the matter, we are of the view that award of Rs.10,000/- by the Family Court cannot be sustained and, therefore, the same requires to be modified to Rs.5,000/- per month. This conclusion we arrive at by taking into consideration the qualification of the respondent as against the appellant.

9.In such view of the matter, we are inclined to modify the order of the V Additional Family Court, Chennai from Rs.10,000/- to Rs.5,000/- per month. The arrears will have to be paid within a period of 12 weeks from the date of receipt of a copy of this order.

10.It is submitted by the learned counsel for the appellant that O.P.No.561 of 2011 has been dismissed for non-compliance of the order passed by the Family Court. We make it clear that on compliance of the arrears as aforesaid, the Family Court is directed to restore O.P.No.561 of 2011 subject to its satisfaction that due compliance is made. After such restoration, O.P.No.561 of 2011 will have to be disposed of within a period of six months thereafter.

11. Accordingly, the Civil Miscellaneous Appeal stands allowed in part. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

mmi

To

The V Additional Family Court, Chennai.

+1cc to Mr.P.R.Thiruneelakandan, Advocate SR.No.15027

+1cc to Mr.V.Shivalinkam, Advocate SR.No.14480

C.M.A.No.684 of 2018

SSD(CO)
GMY(10/06/2020)