

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23/1/2020

C O R A M

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

C.M.A.No.3220 of 2019

Cross Objection No.4 of 2020

and

C.M.P.No.18398 of 2019

C.M.A.No.3220 of 2019

M.Santhosh

... Appellant

Vs

1. K.G.Swetha

2. S. Niharika

rep. By Mother and Natural Guardian

Ms.K.G.Swetha

... Respondents

and

Cross Objection No.4 of 2020

1. K.G.Swetha

2. S. Niharika

rep. By Mother and Natural Guardian

Ms.K.G.Swetha

... Appellants

Vs

M. Santhosh

... Respondent

Prayer in C.M.A.No.3220 of 2019: Appeal filed under Section 19 of the Family Courts Act, against the order and decreetal order in I.A.No.6051 of 2018 in O.P.No.3797 of 2018, on the file of V Additional Family Court, Chennai, dated 22/7/2019.

Prayer in Cross Appeal No.4 of 2020: Appeal filed under Order 41 Rule 22 of C.P.C., against the judgment and decree made in I.A.No.6051 of 2018 in H.M.O.P.No.3797 of 2018, on the file of V Additional Family Court, Chennai, dated 22/7/2019.

For appellants ... Mr.V.Ragavachari
(in C.M.A.No.3220 of 2019)
Respondents in Cross Objection

For respondents R1 & R2 ... Mr.G.Murugendran
in CMA & Petitioner
(in Cross Objection No.4 of 2020)

C O M M O N J U D G M E N T
(Delivered by M.M.SUNDRESH,J)

As both the appeal and Cross Appeal with respect to the quantum amount fixed in I.A.No.6051 of 2018 in H.M.O.P.No.3797 of 2018, they are disposed of by a common judgment.

2. For the sake of convenience and brevity, appellant has been taken as such and the cross-objector as the respondent.

3. Appellant filed H.M.O.P.No.3797 of 2018, on the ground of cruelty, before the Family Court, Chennai. Pending the above said petition, first respondent, filed an application in I.A.No.6051 of 2018, before the V Additional Family Court, seeking interim maintenance for a sum of Rs.50,000/- for herself and Rs.20,000/- to the second respondent, who is the child born out of the wed lock between the appellant and the first respondent.

4. Family Court by taking into consideration the fact that the appellant is a software Engineer and the first respondent got gainfully employed was pleased to grant a sum of Rs.20,000/- and Rs.10,000/- to the first and second respondents, respectively. Challenging the same, present appeals have been filed.

5. Heard Mr.V.Raghavachari, learned counsel for the appellant and Mr.G.Murugendran for the respondents.

6. Mr.V.Raghavachari, learned counsel for the appellant would submit that there is no proof of income of the appellant. The trial Court, had passed the award based upon mere surmise. The appellant has been arrested on a false complaint. Thus, the order requires interference.

7. Learned counsel for the respondents submit that admittedly, the appellant is working in C.T.S which is a leading software company and is earning a sum of Rs.1.8 lakhs per month. This factum of earning has not been seriously disputed by the appellant. First respondent does not have any other means. She is not employed. The factum of marriage and child born out of the wedlock are not in dispute. Thus, the order passed by the Court granting interim injunction requires enhancement.

8. Both the factum of marriage and the birth of child are not in dispute. Appellant working in a leading software Company is also not in dispute. The appellant did not seriously contest his income. First respondent is not expected to what the salary received by the appellant. The Family Court has taken into consideration the relevant material has awarded interim maintenance. No straight jacket

formula have ever been followed in such cases. The amount of Rs.30,000/- is very fair. This amount has been apportioned between the first and second respondents at Rs.20,000/- and Rs.10,000/- respectively. In such a view of the matter, we are not inclined to roving enquiry at this stage.

9. Accordingly, Civil Miscellaneous Appeal and Cross Objection stand dismissed. Taking into consideration of the fact that main H.M.O.P is pending for more than a year, we call upon the V Additional Family Judge, Chennai, to dispose of the same, within a period of six months, from the date of receipt of a copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mvs.

To:

1. V Additional Family Court, Chennai

+lcc to Mr.V.Raghavachari, Advocate, S.R.No. 4975

Civil Miscellaneous Appeal No.3220 of 2019

and

Cross Objection No.4 of 2020

NMI (CO)

GN (27/02/2020)

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