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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

CMA.No.330/2021 and CMP.No.2243/2021

Sheela Margret ... Appellant/Respondent

-vs-

D.Arul Don Bosco @ Johnson @ John ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Section 55 of the Indian Divorce Act, against the order dated 24.11.2020 made in I.A.No.1/2020 in O.P.No.9/2019 by the learned Judge, Family Court, Udhagamandalam.

For Appellant : Mr.J.Franklin

For Respondent : Mr.R.Subramanian

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

The Civil Miscellaneous Appeal has been directed against the order and decretal order dated 24.11.2020 made in I.A.No.1/2020 in O.P.No.9/2019 by the learned Judge, Family Court, Udhagamandalam, thereby directing the respondent herein-husband to pay a sum of Rs.5,000/- p.m. towards interim maintenance from the month of March 2020 until further orders.

2. The case of the appellant-wife is that the marriage between her and the respondent was solemnized at Sagayamatha Church, Masanagudi, The Nilgiris, on 13.09.2007, as per the Christian Rites and Customs prevailing in their Society and out of the said wedlock, a female child, namely, Kavya was born to them. While so, the respondent husband got a job in Dubai and during his absence, his parents used to torture the appellant by abusing her with filthy language and not permitted her to speak



to her husband over phone and thereafter, when the respondent came back to India on vacation, at the instigation of his parents, she was driven out from the matrimonial home. Though the appellant has expressed her willingness to join with the respondent-husband, he failed to take her back to the matrimonial home. Thereafter, the respondent husband initially filed IDOP.No.54/2011 and on his own withdrew the same. Subsequently, the respondent husband filed O.P.No.9/2019 before the Family Court, The Nilgiris at Udhagamandalam, seeking dissolution of the marriage held between the parties on 13.09.2007. Pending the Original Petition, the appellant-wife herein filed I.A.No.1/2020 in O.P.No.9/2019 seeking a sum of Rs.25,000/- towards litigation charges and Rs.25,000/- p.m. towards interim maintenance. The further case of the appellant is that her husband-respondent is admittedly working in Dubai in an Automobile Company, namely, 'Autoredo'. His monthly salary has not been disclosed. However, it has been stated that he was getting a sum of Rs.2,00,000/- p.m.

3. On the other hand, it was pleaded by the respondent that when he has passed only S.S.L.C. and working in an Automobile Company in Dubai, it is highly improper and unjustifiable on the part of the appellant-wife to say that he is getting a huge monthly salary of Rs.2,00,000/-. But, he has been getting a salary of only Rs.18,000/- p.m. and out of the said amount, he has been sending Rs.5,000/- to his old parents to meet out their medical expenses and he is also paying a sum of Rs.10,000/- towards house rent in Dubai. Therefore, when the respondent-husband is facing these difficulties, it is very difficult for him to pay even Rs.5,000/- p.m. towards interim alimony to his wife.

4. However, the learned Family Court, considering the facts and circumstance of the case has directed the respondent husband to pay a sum of Rs.5,000/- p.m. towards interim maintenance to the appellant-wife from the month of March, 2020, until further orders. Having not satisfied with the said amount, the petitioner-wife therein has preferred the present Civil Miscellaneous Appeal before this Court seeking enhancement of the interim maintenance.

5. Learned Counsel for the appellant-wife would submit that it is well settled legal position that when the wife goes to court seeking maintenance on the ground that the husband has to take care of the wife and also the child whose custody is with the wife, the respondent-husband has to pay for the same. But that burden has not been discharged by the respondent-husband. Learned Counsel for the appellant would further submit that the respondent-husband is working in an Automobile Company in Dubai and getting Rs.2,00,000/- p.m. towards salary.



Therefore, the interim maintenance of Rs.5,000/- p.m. awarded by the court below has to be enhanced as she finds it very difficult to maintain herself and her daughter with the said sum.

6. It is, at this juncture, Mr.R.Subramanin, learned Counsel for the respondent-husband fairly submitted that the respondent is only a S.S.L.C. passed candidate and though he has got employment in one of the Automobile Companies in Dubai, he is getting only a meagre amount towards salary and not Rs.2,00,000/- as alleged by the appellant-wife. Therefore, keeping in mind the said fact, without prolonging the matter, this court may fix any reasonable amount towards interim maintenance payable to the appellant-wife by the respondent-husband and dispose of the matter.

7. In such view of the matter, instead of prolonging the matter, in the interest of justice, we enhance the monthly maintenance of Rs.5,000/- p.m. as ordered by the Family Court, The Nilgiris at Udhagamandalam to Rs.10,000/- p.m. The respondent-husband is directed to pay Rs.10,000/- p.m. towards interim maintenance to the respondent-wife from the date of petition until further orders and to pay the arrears, if any, within a period of two weeks from the date of receipt of a copy of this Order.

8. With the above modification, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Judge,
Family Court,
The Nilgiris at Udhagamandalam.

+1cc to Mr.J.Franklin, Advocate Sr.15761
+1cc ot Mr.R.Subramanian, Advocate Sr.15746

CMA.No.330/2021

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