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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

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

CMA.No.870/2021 and CMP.No.5048/2021

J.Leslie Arulkumar
S/o.Jeya kumar

.. Appellant/ Petitioner

-vs-

P.Pradeeba
D/o.S.Palanisamy

... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the fair and decreetal order dated 01.12.2020 made in I.A.No.591 of 2018 in DOP.No.1083/2018 by the learned Additional Principal Judge, Additional Principal Family Court, Coimbatore.

For Appellant : Mr.K.Venkateswaran

For Respondent : Mr.C.R.Prasanan

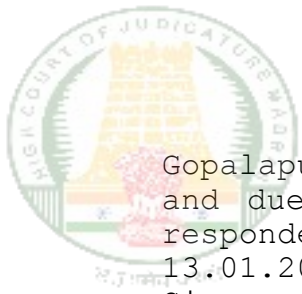
JUDGMENT

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

The matter was listed today under the caption, 'for admission'.

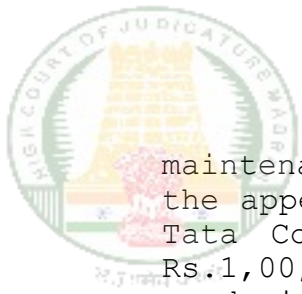
2. The Civil Miscellaneous Appeal has been directed against the fair and decreetal order dated 01.12.2020 made in I.A.No.591 of 2018 in DOP.No.1083/2018 by the learned Additional Principal Judge, Additional Principal Family Court, Coimbatore, thereby directing the appellant-husband to pay a sum of Rs.10,000/- p.m. as interim maintenance to the respondent-wife pending litigation from the date of filing of the application and to pay a sum of Rs.5,000/- towards litigation expenses.

3. Learned Counsel appearing for the appellant-husband pleaded that the marriage between the appellant and the respondent was solemnized on 19.05.2016 at All Soul's Church,



Gopalapuram, Coimbatore, as per the Christian rites and customs and due to some misunderstanding that arose between them, the respondent-wife left the matrimonial home at Mumbai on 13.01.2018 and came back to her parental home at Coimbatore. Since all the mediation talks initiated by the appellant were failed, he filed D.O.P.No.1083/2018 before the Family Court, Coimbatore seeking divorce. Pending the Original Petition, the respondent wife has filed I.A.No.519/2019 in D.O.P.No.1083/2018 seeking interim maintenance. The learned Counsel further pleaded that when the respondent-wife has already filed a case for maintenance in M.C.No.136/2018, filing yet another petition seeking interim maintenance would amount to abuse of process of law. Moreover, when the respondent-wife had already left the matrimonial home and started living with her parents who are employees of State Government as well as Central Government respectively, the respondent-wife is not entitled to get any maintenance. Adding further, it is pleaded that when the respondent-wife who is willing to live with her parents to lead a luxurious life in her parental home without even disproving the allegation and desertion levelled against the appellant-husband, she is not entitled to maintain two petition seeking maintenance, one in M.C.No.136/2018 and another in I.A.No.591/2018 in DOP.No.1083/2018 before the learned Additional Principal Judge, Additional Principal Family Court, Coimbatore in which the present impugned order has been passed. The learned Counsel for the appellant also pleaded that when the respondent-wife is a highly qualified person possessing M.B.A. Post Graduate Degree that shows that she is capable of leading an independent life. But without considering the said plea, the interim maintenance application has been allowed by directing the appellant- husband to pay a sum of Rs.10,000/- p.m. towards maintenance. Moreover when the respondent-wife has filed the interim maintenance application seeking interim maintenance on the ground that the appellant-husband has been earning a sum of Rs.1,00,000/- p.m. by working as Manager in Tata Consultancy Services, Mumbai, but no proof whatsoever has been placed the lower court whether the appellant has been receiving such a huge monthly salary. Without even considering the fact that the respondent has come to the court with bald allegation, directing the appellant-husband to pay a sum of Rs.10,000/- p.m. as monthly maintenance and Rs.5,000/- towards litigation charges is unfounded and unjustifiable. Therefore, the impugned order is liable to be set aside, it is pleaded.

4. In reply, learned Counsel for the respondent pleaded that the allegation of desertion needs to be proved before the trial court only when the matter is taken up for trial and no doubt, it would take a long time. In the meanwhile, the respondent-wife has to survive as she is wholly depending upon the husband-appellant herein, therefore, it is the bounden duty of the appellant-husband to pay the maintenance to his wife. Moreover, when the application has been filed seeking interim



maintenance for payment of Rs.20,000/- p.m. on the ground that the appellant has been working as Manager in the higher level in Tata Consultancy Services in Mumbai for a monthly salary of Rs.1,00,000/-, the appellant has not denied the same by producing the monthly pay slip or any other document showing that the contention made by the respondent wife in the interim maintenance application was wrong. On the other hand, he has simply pleaded that he was earning a sum of Rs.50,000/- p.m. without any supporting documents. Therefore, the learned Family Court, rightly considering the fact that the respondent-wife has to survive to conduct the case, has ordered only Rs.10,000/- p.m. towards interim maintenance along with Rs.5,000/- for litigation charges. Hence, the present Civil Miscellaneous Appeal has to be dismissed.

5. We find merit on the submission of the learned Counsel for the respondent-wife. The reason being that firstly, when the respondent-wife has stated that the appellant-husband has been working as Manager in Tata Consultancy Services, Mumbai and earning a sum of Rs.1,00,000/- p.m., though the said contention was denied by the appellant-husband, he has not produced any document whatsoever to disprove the said contention. Secondly, the contention of the learned Counsel for the respondent-wife that the allegation of desertion will be proved only at the time of trial before the lower court and it would take a long time and in the meantime, the respondent-wife has to survive is no doubt true. Therefore, considering the said fact, the lower court has awarded a sum of Rs.10,000/- p.m. towards interim maintenance till the date of application and also awarded a sum of Rs.5,000/- towards litigation charges as the appellant husband is having a bounden duty to take care of his wife. Hence, we do not find any infirmity or illegality in the said order of the lower court to interfere with the same.

6. At this stage, learned Counsel for the appellant-husband requested us to give a direction to the lower court to dispose of the DOP.No.1083/2018 at the earliest since the appellant-husband who is at presently working in TCS Mumbai finds it difficult to visit the Additional Principal Family Court, Coimbatore, frequently.

7. In view of the above, the learned Additional Principal Judge, Additional Principal Family Court, Coimbatore, is directed to dispose of the case in DOP.No.1083/2018, pending on his file expeditiously, more preferably, within a period of six months from the date of receipt of a copy of this Order along with the restitution of conjugal rights application filed, if any, by the respondent-wife.



8. With the above observation and direction, the Civil Miscellaneous Appeal is dismissed at the admission stage itself. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
The Additional Principal Judge, Additional Principal Family
Court, Coimbatore.

+1cc to Mr.K.Venkateswaran, Advocate SR.No. 16955

+1cc to Mr.C.R.Prasanan, Advocate SR.No. 16458

CMA.No.870/2021

EV co

A.SK(18.08.2021)