



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM :

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NO.375 OF 2021
AND
C.M.P.NO.2488 OF 2021

B.Kalaivani ... Appellant

Vs

S.Saravana ... Respondent

Prayer :

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the order and decretal order dated 06.07.2020 made in I.A.No.775 of 2019 in F.C.O.P.No.26 of 2018 passed by the Learned Judge, Family Court, Salem, Salem District and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.M.R.Jothimanian

For Respondent : Ms.Premalatha
for Mr.R.Naliyappan.

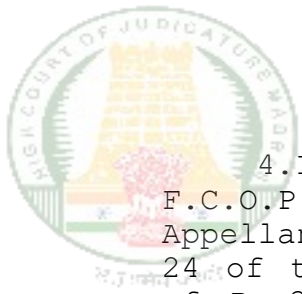
J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The matter has been heard through "Video Conference".

2.The appeal has been preferred by the wife challenging the order of interim maintenance dated 06.07.2020 awarded by the Trial Court for the claim of the Appellant for a sum of Rs. 30,000/- as interim maintenance.

3.The Appellant and the Respondent got married on 13.03.2009. However, due to dispute between the parties, they were residing separately for the past nine years. Therefore, the Respondent filed a Petition in H.M.O.P.No.26 of 2018 for divorce and the Appellant filed a Petition in H.M.O.P.No.160 of 2017 for restitution of conjugal rights. Both the proceedings have been transferred to Family Court, Salem and the now the same are pending before the Family Court, Salem.



4. In the Petition filed by the Respondent for divorce in F.C.O.P.No.26 of 2018 on the file of Family Court, Salem, the Appellant filed a Petition in I.A.No.775 of 2019 under Section 24 of the Hindu Marriage Act, 1955 seeking interim maintenance of Rs.30,000/-. However, the Family Court awarded a sum of Rs.5,000/- as interim maintenance on the ground that the Appellant is capable of working as a Private College Lecturer and moreover, the Appellant has completed M.Com., M.Phil., and M.B.A., Degrees. Since, the trial Court, on considering the status of both the parties and educational qualifications has awarded only a sum of Rs.5,000/- as interim maintenance, the Appellant has filed the present Appeal challenging the said Order.

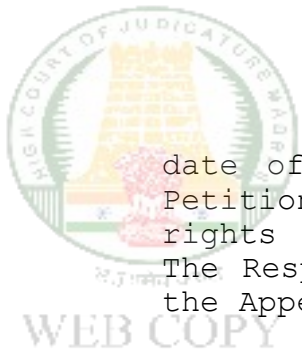
5. Heard Mr.M.R.Jothimanian, Learned Counsel for the Appellant and Ms.Premalatha, Learned Counsel for the Respondent.

6. Both the parties have appeared before this Court through Video Conference. It is evident from the communication between the parties that though the Appellant possess higher degrees, she is not working at present. Even at the time of marriage, she was drawing only a sum of Rs.15,000/- per month, which post was also resigned and at present, she is not employed.

7. It is seen from the salary certificate of the Respondent produced before this Court that he is earning a sum of Rs.1,90,035/- per month. A perusal of the records especially counter statement filed by the Respondent would show that he has not disclosed the fact that he is drawing a sum of Rs.1,90,035/- as monthly income before the trial Court and moreover, he has not produced the concerned documents before the trial Court. This Court, deems that it is a deliberate attempt made by the Respondent to suppress the concerned documents related to his income at the time of hearing.

8. It is seen that the trial Court, very sadly, has not looked into the matter properly and awarded a sum of Rs.5,000/- as interim maintenance which is not sustainable in law. Admittedly, the Appellant is not working and when she was working in a private college, she has earned only a sum of Rs.15,000/- per month. Further, the salary certificate of the Respondent produced before this Court has not been denied by the Respondent and he would only submit that he has got aged parents to look after.

9. It is the duty of the Respondent to look after his parents as well as his wife. Therefore, Rs.5,000/- awarded per month towards interim maintenance by the Family Court, Salem in I.A.No.775 of 2019 is enhanced to Rs.25,000/- per month from the



date of the Petition i.e., 06.09.2019 till the disposal of the Petition filed by the Appellant for restitution of conjugal rights and the Petition filed by the Respondent for divorce. The Respondent shall pay a sum of Rs.25,000/- to the account of the Appellant on or before 5th of Every English Calendar month.

10. Further, Rs.10,000/- awarded towards litigation expenses to the Appellant is enhanced to Rs.50,000/- and the same shall be paid by the Respondent within a period of two weeks from the date of receipt of a copy of this Order and the arrears of the interim maintenance shall be paid by the Respondent within a period of four weeks from the date of receipt of a copy of this Order.

11. Since the trial Court, without even appreciating the basic facts passed the order and awarded a sum of Rs.5,000/- as interim maintenance and Rs.10,000/- towards litigation expenses, it may not be appropriate to direct the same Judicial Officer to hear and dispose of the matters. Therefore, this Court transfers F.C.O.P. Nos. 26 of 2018 and 160 of 2017 on the file of the Family Court, Salem to the Family Court, Namakkal. The Family Court, Namakkal is directed to dispose of the said matters on or before 31.01.2022.

12. With the above directions, this appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ay/rri

To

1. The Judge,
Family Court,
Salem, Salem District.
2. The Judge,
Family Court, Namakkal.

+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.31303

C.M.A.No.375 of 2021

AK-II(CO)
CS/14/07/2021