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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2021

CORAM

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

C.M.A.No.969 of 2021
and
CMP.No.5407 of 2021

R.Vijayakumar ... Appellant/Respondent/Respondent

-vs-

Kannigaparameswari ... Respondent/Petitioner/Petitioner

Civil Miscellaneous Appeal filed against the Fair and decreetal order dated 23.01.2021 made in I.A.No.2314/2016 in O.P.No.3465 of 2015 by the learned II Additional Judge, II Additional Family Court, Chennai.

For Appellant : Mr.K.S.Ilangovan

For Respondent : Mr.Guru Dhananjay

JUDGMENT

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

The Civil Miscellaneous Appeal has been directed against the fair and decreetal order dated 23.01.2021 made in I.A.No.2314/2016 in O.P.No.3465 of 2015 by the learned II Additional Judge, II Additional Family Court, Chennai, thereby directing the appellant-husband to pay a sum of Rs.10,000/- p.m. towards interim maintenance to the respondent-wife for the welfare of their minor child, namely, Aswinth Kumar, aged about 8 years.

2. The short facts of the case are as follows:



The marriage between the appellant and the respondent was solemnized on 12.02.2012 and they were blessed with a male child, who was born on 02.04.2013. Thereafter, it is stated that since the appellant-husband has not shown any interest to take care of his wife and the child, the respondent-wife left the matrimonial home and went to the parental home. Subsequently, the appellant-husband filed a petition for divorce. But the respondent wife has filed O.P.No.3465/2015 seeking restitution of conjugal rights. Though the respondent wife has been working as Duty Nurse in V.S.Hospital, Chennai, she finds it difficult to run the family with her income alone. Therefore, since the appellant husband is working in BHEL and earning a handsome salary, the respondent wife has filed I.A.No.2314/2016 in the pending O.P.No.3465/2015 seeking interim maintenance of Rs.25,000/- p.m. for the welfare of their child. Though the same was resisted by the appellant husband by filing a counter affidavit, after contest, the learned II Additional Principal Judge, II Additional Family Court, Chennai, while partly allowing the prayer of the respondent-wife directed the appellant-husband to pay Rs.10,000/- p.m. to the petitioner for the welfare of the minor son w.e.f. 23.09.2016 and further directed to pay the arrears of interim maintenance till January, 2021 on or before 26.02.2021 and also directed to pay the interim maintenance at the rate of Rs.10,000/- p.m. continuously. Aggrieved over the same, the appellant-husband is before this Court with this Civil Miscellaneous Appeal.

3. Learned Counsel for the appellant-husband submitted that the appellant-husband has preferred a petition seeking divorce on the ground of cruelty and desertion caused by the respondent-wife. Learned Counsel further submitted that when the respondent-husband is working as Nurse in a private hospital, she can very well take care of herself and the minor son and when she left the matrimonial home on her own accord, she is not entitled for any interim maintenance as awarded by the trial court.

4. Learned Counsel for the respondent-wife submitted that though the appellant husband has filed a petition seeking divorce, the respondent wife has filed O.P.No.3465/2015 seeking restitution of conjugal rights and also filed I.A.No.2314/2016 seeking interim maintenance for the welfare of their minor son who was born on 02.04.2013. Learned Counsel for the respondent further submitted that the appellant husband has been working as Welder-Labour Category in BHEL and also drawing a monthly salary of Rs.59,845.67p. Therefore, it is his duty to maintain his minor son. Therefore, the present appeal has to be dismissed, it is pleaded.

5. Heard the learned Counsel on either side and we have

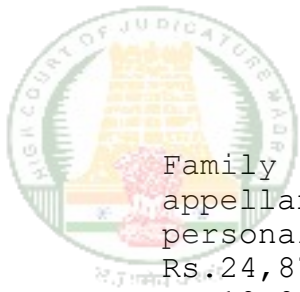


also gone through the records carefully.

6. At the outset, the facts that the marriage between the appellant and the respondent was solemnized on 12.02.2012 and they were blessed with a male child, who was born on 02.04.2013 and due to some difference of opinion between them, they were separated are not in dispute. Subsequently, it appears that the appellant-husband filed a petition for divorce whereas the respondent wife has filed O.P.No.3465/2015 seeking restitution of conjugal rights and also filed I.A.No.2314/2016 in the pending O.P.No.3465/2015 seeking interim maintenance of Rs.25,000/- p.m. for the welfare of the child on the ground that though she has been working as Duty Nurse in V.S.Hospital, Chennai, she finds it difficult to run the family with her income alone and the appellant, who is the father of the minor child and working in BHEL and earning a handsome salary, is also duty bound to take care of his son. However, before the trial court, it also appears that the appellant herein-husband has filed a detailed counter affidavit stating that his monthly take home salary is only Rs.24,872/- after making deductions under various heads and with the said meagre amount, he is duty bound to maintain his widow mother and deceased brother's wife also. Therefore, it is highly impossible for him to pay Rs.10,000/- p.m. towards interim maintenance for the welfare of his son because the respondent-wife herself is working as Nurse in a private hospital and earning sufficiently.

7. The learned II Additional Judge, II Additional Family Court, Chennai, after elaborately dealt with the matter held that it is not explained for what purpose the personal loan and Provident Fund loan have been raised by the appellant husband as to whether for his own benefit or not. The Family Court further held that the deduction under the head of personal loan to the tune of Rs.18,724/- p.m. and Rs.2,557/- p.m. towards recovery of Provident Fund loan cannot be considered for non-payment of the maintenance towards his own son. At last, the Family Court has directed the appellant husband to pay a sum of Rs.10,000/- p.m. for the welfare of the minor son to the respondent-wife w.e.f. 23.09.2016 and also directed to pay the arrears of interim maintenance on or before 26.02.2021. Aggrieved over the same, it appears that the appellant-husband has approached this Court by filing the present appeal.

8. We have also gone through the reasons assigned by the learned Family Court below. One of the reasons assigned by the Family Court shows that as a matter of fact, the appellant husband is liable to pay $\frac{1}{3}^{\text{rd}}$ of the net pay as interim maintenance to the wife and also the child. But, in the present case, admittedly, the respondent-wife is employed as a Nurse in a private hospital and earning sufficiently. Therefore, the



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Family Court, bearing in mind that the monthly income of the appellant husband is Rs.34,973.67p and after deduction towards personal loan and provident fund loan, his net pay is Rs.24,872/-, directed the appellant husband to pay a sum of Rs.10,000/- towards interim maintenance to the respondent-wife for the welfare of his son. Though, we are unable to find any infirmity in the impugned fair and decreetal order of granting interim maintenance, however, considering the fact that time being, the take home salary of the appellant-husband is only Rs.24,872/- and in that, he has to also take care of his mother and deceased brother's wife, we are of the view that it is difficult for him to pay the interim maintenance of Rs.10,000/- p.m. as ordered by the Family Court below and also meet out his family expenses. Therefore, in the interest of justice, we are inclined to slightly modify the order.

9. Accordingly, the appellant-husband is directed to pay interim maintenance for the welfare of his minor son to the respondent at the rate of Rs.7,000/- p.m., instead of Rs.10,000/- p.m. w.e.f. 23.09.2016.

10. At this stage, learned Counsel for the appellant-husband submitted that the appellant has already paid Rs.50,000/- towards interim maintenance to his son and eight more weeks time may be granted to pay the arrears of maintenance.

11. Considering the fact that the appellant husband has already paid only Rs.50,000/- towards interim maintenance, he is directed to pay a further sum of Rs.1,00,000/- towards the arrears of interim maintenance within ten days from the date of receipt of a copy of this Order and the balance shall be paid within six weeks thereafter.

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

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The II Additional Judge,
II Additional Family Court,
Chennai.

2. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Achari & Anthoni Associates, Advocate, S.R.No.20698

+1cc to Mr.Guru Dhananjay, Advocate, S.R.No.20273

+3ccs to Mr.Guru Dhananjay, Advocate, S.R.No.20273 (25/11/2021)

C.M.A.No.969/2021

AD(CO)
SU(08/11/2021)