

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.03.2021

CORAM

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

C.M.A. No.1335 of 2021 and
C.M.P. Nos.6856 & 6857 of 2021

K.Kumar ... Appellant

-VS-

1.Anuradha

2.K.Sanjana,
Minor Girl represented by her mother
and natural guardian ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 41 Rule 1 of C.P.C. Read with Section 19 of the Family Courts Act 1984 to set aside the impugned order dated 21.12.2017 passed in I.A. No.2422 of 2016 in O.P. No.3333 of 2013 by the V Additional Judge, Family Court, Chennai.

For Appellant सत्यमेव जयते : Mr.K.Ravi Anantha Padmanaban

For Respondents : Mrs.Sudha Ramalingam

JUDGMENT

Judgment of this Court was delivered by **T.RAJA,J.**

The appeal has been directed against the fair and decretal order dated 21.12.2017 passed by the V Additional Judge, Family Court, Chennai in I.A. No.2422 of 2016 in O.P. No.3333 of 2013.

2.Learned counsel appearing for the appellant/husband submitted that after the marriage was solemnized between the appellant and the respondent on 10.09.2004 at Sri O.N.Mahal Kalyana Mandapam, Thuraiyur, Trichy District, they were blessed with a female child, namely, Sanjana. Due to some difference of opinion that arose between themselves, the appellant husband filed the Original Petition in O.P. No.3333 of 2013 before the Principal Family Court, Chennai on the ground of cruelty and desertion. During the pendency of the above O.P., the respondents filed an Interim Application in I.A. No.2422 of 2016 before the I Additional Family Court, Chennai seeking a direction to the appellant husband to pay a sum of Rs.20,000/- per month to the first respondent wife and Rs.20,000/- to the second respondent daughter towards interim maintenance. But without considering the counter affidavit filed by the appellant husband, the Family Court has directed the appellant husband to pay Rs.10,000/- to the first respondent and Rs.10,000/- to the second respondent per month towards interim maintenance from the date of the order.

3.Learned counsel appearing for the appellant further submitted that the appellant has been placed under suspension by the department and during the period of suspension, he has been paid only with 50% as subsistence allowance although he is entitled to get 75% of subsistence allowance. Therefore, he has given a representation to the department to pay 75% of the subsistence allowance, but the same has not been considered.

Although the take home salary of the appellant is Rs.72,000/-, he is liable to pay Rs.43,000/- towards housing loan to the Axis Bank, Chennai. Besides, being the eldest son, he has to take care of his parents, who are senior citizens. Since his mother has been undergoing treatment, he has to bear Rs.5,000/- every month for her medical expenses. After the above deductions, the remaining amount is only Rs.20,000/-, therefore, if the order passed by the Family Court is allowed to stand, the appellant may not be in a position to pay the maintenance amount as ordered by the Family Court, hence, he has been advised to come to this Court for modification, although he is liable to pay maintenance. Learned counsel for the appellant further pleaded that as and when the order of suspension is revoked, the entire arrears of Rs.2,00,000/- + balance amount of Rs.10,000/- for every month would be paid gradually, however, in view of the present facts and circumstances, the appellant is able to pay Rs.10,000/- per month instead of Rs.20,000/- and the balance of Rs.10,000/- p.m. will be paid when the situation stands improved.

4.Learned counsel for the respondents submitted that instead of Rs.10,000/-, Rs.12,000/- be fixed by this Court towards interim maintenance for the time being.

5. Learned Counsel for appellants submits that appellant admits his liability to pay the monthly maintenance but his unfortunate suspension from service ties his ability to pay the monthly maintenance.

6. Since we are able to accept the submission made by the learned counsel appearing for the appellant, we are inclined to modify the order passed by the Family Court. Accordingly, the appellant husband is directed to pay Rs.12,000/- every month to the respondents till he is re-instated or he is getting 75% of the subsistence allowance.

7. Needless to mention that the appellant has to clear the arrears within a period of six months from the date of receipt of a copy of this order.

8. With the above direction, the appeal stands disposed of. Consequently, connected C.M.Ps are closed. No costs.

सत्यमेव जयते

(TRJ) (GCSJ)
31.03.2021

Index : Yes

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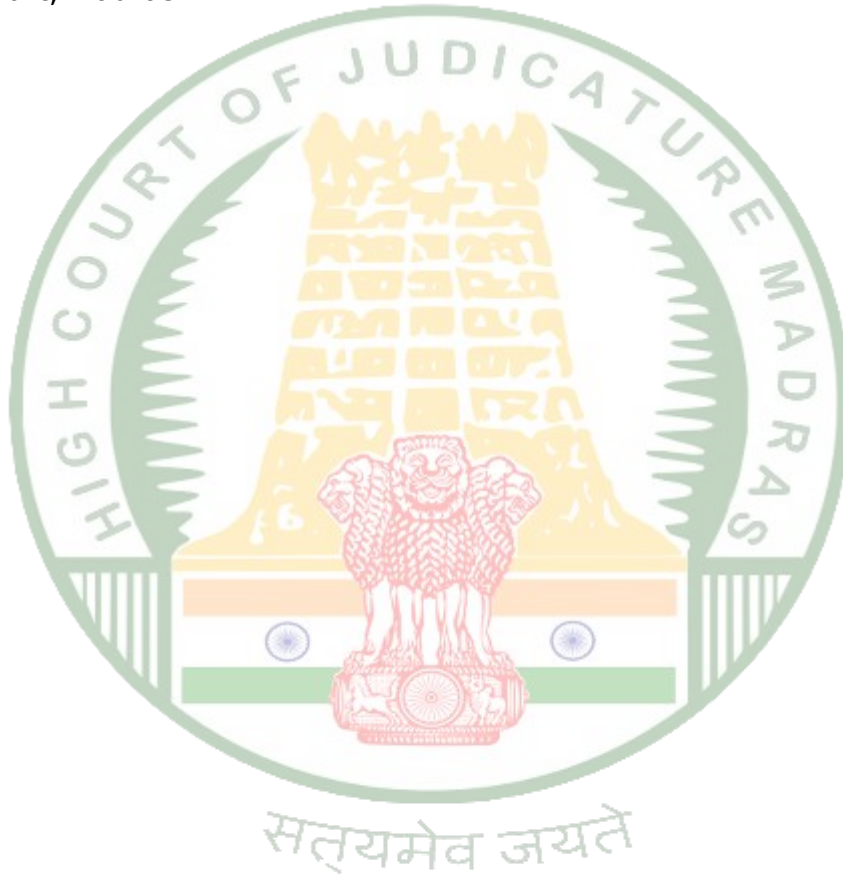
Note: Issue order copy on 01.04.2021

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To

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

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

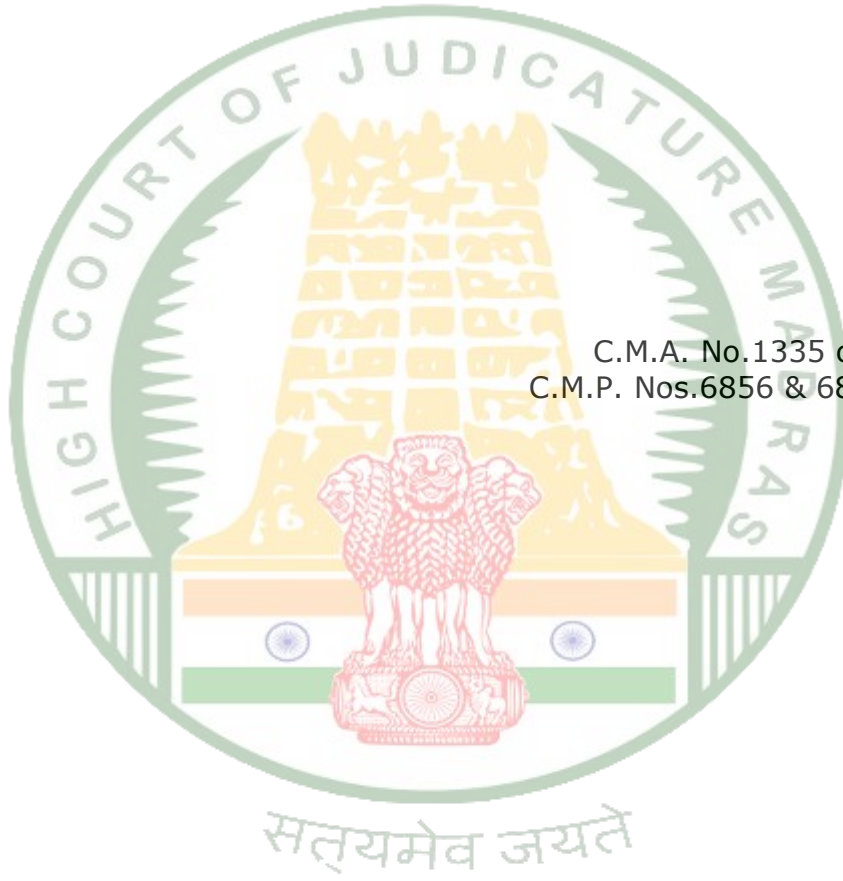


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and
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