



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.3175 of 2021  
and C.M.P. No.17976 of 2021

S.Arulselvam

... Appellant

vs

B.Dhivyaa

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 30.01.2018 made in I.A. No.2827 of 2016 in O.P. No.327 of 2015 on the file of the learned VI Additional Family Court, Chennai.

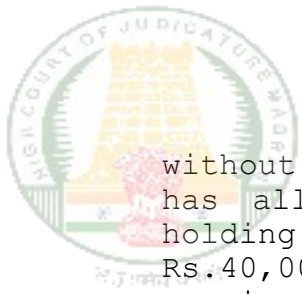
For Appellant : Mr.R.Prabakar for  
Mr.N.S.Suganthan

#### JUDGMENT

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

This appeal has been directed against the impugned interim order directing the appellant husband to pay a sum of Rs.10,000/- towards interim maintenance to the respondent wife from the date of the petition, namely, 30.01.2015 till the disposal of the main petition and also to pay a sum of Rs.10,000/- towards litigation expenses.

2.Learned counsel appearing for the appellant husband, assailing the impugned order, pleaded that the payment of monthly maintenance of Rs.10,000/- is highly unjustifiable, since the appellant was forced to resign his job on 17.10.2017 on account of cruelty caused to him by the respondent wife. In support of his submission, learned counsel for the appellant, soliciting our notice to page No.39 of the typed set of papers filed by the appellant, showing relieving letter issued by the TATA Consultancy Services, pleaded that when the appellant was relieved from the post of Team Leader in the TATA Consultancy Services Limited, the payment of Rs.10,000/- towards interim maintenance ordered by the VI Additional Principal Judge, Chennai is untenable. Learned counsel appearing for the appellant further submitted that since the appellant has resigned his job, the VI Additional Principal Judge, Chennai,



without looking into the financial position of the appellant, has allowed the application filed by the respondent wife, holding that the appellant has been earning less than Rs.40,000/-per month, which is in-correct. Although the marriage of the parties was solemnised on 15.02.2013 at Arulmighu Vadapalani Murugan Temple, Vadapalani, Chennai as per the Hindu rites and customs, the reception was held on 17.02.2013 at Nathella Sulochanamma Kalyana Mandapam, 100 Feet Road, near Koyambedu Bus Terminus, Chennai, to the shock and surprise of the appellant, on the very same day night itself, the respondent made quarrel with the appellant and abused his parents in filthy language, which has shown her bad character and disrespect with elders. Moreover, she took a stand that she had agreed for the marriage, only due to the compulsion of her parents and she also shouted on the appellant saying that she would definitely get divorce from him. As the marriage was forced one against her will and she has not accepted for leading the matrimonial life with the appellant and she did not allow him for consummation of marriage, due to the continuous fight and non co-operation of the respondent wife, which resulted in her leaving the matrimonial home, the appellant filed the divorce petition under Section 13(1)(i-a) of the Hindu Marriage Act seeking divorce on the ground of cruelty. During the pendency of the petition, the respondent wife moved a petition seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act 1955 stating that she was interested to have the matrimonial life. Since both the divorce petition and the petition seeking restitution of conjugal rights are pending for consideration, there is no need on the part of the VI Additional Principal Judge, Chennai to order the payment of monthly maintenance to the respondent wife. As the appellant has resigned his job, which could be seen from the relieving letter annexed at page No.39 of the typed set of papers filed by the appellant, the impugned order directing the payment of maintenance is liable to be interfered with.

3.We do not find any merit either to interfere with the impugned order passed by the learned VI Additional Principal Judge, Chennai directing the appellant to pay only a meagre amount of Rs.10,000/- to look after the monthly maintenance of the respondent wife or to agree with the submissions made by the learned counsel appearing for the appellant. Learned counsel for the appellant submitted that the appellant had tendered his resignation from the service of the TATA Consultancy Services, Chennai on 17.10.2017 and the said Company, by letter dated 09.01.2018, has relieved the appellant from their service. It is well settled legal position that in the matrimonial proceedings, the wife and children can seek maintenance against the husband/father, as the case may be. It is to provide them financial support. It is for their survival, as long as the matrimonial proceedings are pending. Thus, they came to be called 'pendent lite maintenance'. (A reference can be had from Deepa Vs. Balaji



[2017 SCC Online Mad 20701]

4.Secondly, the marriage solemnised on 15.02.2013 at Murugan Temple, Vadapalani, Chennai, has not been terminated for the simple reason that both the divorce petition in H.M.O.P. No.4264 of 2014 filed by the appellant under Section 13(1)(i-a) of the Hindu Marriage Act and the restitution petition in F.C.O.P. No.327 of 2015 filed by the respondent under Section 9 of the Hindu Marriage Act are pending for Trial before the VI Additional Principal Judge, Chennai. Since the same are pending, we cannot presume the merits of the petitions filed by the appellant and the respondent and pre-judge in favour of the appellant. Therefore, the impugned interim order, directing the appellant to pay a sum of Rs.10,000/- towards interim maintenance, which is only an interim arrangement, cannot be found fault with.

5.For all these reasons, this appeal stands dismissed. Consequently, C.M.P. No.17976 of 2021 is closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

vga

To

The VI Additional Judge,  
Family Court, Chennai.

+1cc to Mr.N.S.Suganthan, Advocate SR.No.58108

C.M.A.No.3175 of 2021  
and C.M.P. No.17976 of 2021

GPL(CO)  
GMY(08/12/2021)