

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1872 of 2018
and C.M.P.No.1441 of 2018

1.M.Rebecca Reena
2.Minor.Elizabeth Sandra .. Appellants/Petitioners

Vs.

Dr.S.Ponnarasu @ William Issac .. Respondent/ Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, praying to set aside the order of the learned Principal District Judge, Kancheepuram District at Chengalpattu, dated 28.06.2018, in I.A.No.257 of 2018, in I.D.O.P.No.1 of 2017 and allow the above CMA.

For Appellants : Mr.J.Hariharan
for M/s.V.Nicholas

For Respondent : No Appearance

J U D G M E N T

The appellants preferred this memorandum of Civil Miscellaneous Appeal, challenging the fair and decreetal order passed by the Principal District Judge, Kancheepuram District, Chengalpattu, dated 28.06.2018, in I.A.No.257 of 2018 in I.D.O.P.No.1 of 2017 and allow the above Civil Miscellaneous Appeal.

2. Point for consideration:

Whether the trial Judge has erred in awarding the maintenance amount without effect from the date of filing of the application?

3. It is admitted fact that the appellants are the wife and daughter of the respondent herein. The respondents herein filed the above I.D.O.P.No.1 of 2017, praying for divorce

under Section 10(1) (ix) (x) of Divorce Act, 1869. The petition also contested by the wife of the first appellant herein. During the pendency of the said petition, the wife/appellant herein filed an interim application in I.A.No.257 of 2018, dated 28.06.2018, seeking interim maintenance for herself and her minor daughter. This respondent also contested the said petition. After full enquiry, the trial Court passed the order of interim maintenance. The respondent is directed to pay the interim maintenance of Rs.10,000/- to the wife and Rs.5,000/- to the minor daughter with litigation expenses.

4. But the trial Judge failed to mention about the maintenance amount shall be paid with effect from the date of application. Aggrieved that portion alone, the appellants approached the Court.

5. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India, in Crl.Appeal.No.730 of 2020, arising out of SLP (Crl).No.9503 of 2018 in Rajnesh Vs. Neha and others and another judgment in Madurai Bench of Madras High Court in Crl.R.C(MD).No.701 of 2017. He argued that the order of maintenance should effect from the date of application and not from passing of the order in that application.

6. At the time of arguments, the learned counsel for the respondent also formally raised objection.

7. The ratio laid down in the above judgements squarely applicable to the facts of the case. The trial Judge ought to have mentioned about the effect of the order from the date of filing of the IDOP petition as the petitioners were not maintained by the respondent from the year 2017 onwards, so they are entitled for the maintenance amount from the date of I.D.O.P filed by the respondent in the year 2017. Therefore, the respondent is directed to pay the interim maintenance amount to the appellants from the date of filing of I.D.O.P.

8. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

The Principal District Judge,
Kancheepuram District at Chengalpattu

+1cc to M/s.V.Nicholas, Advocate SR.No.20674

C.M.A.No.1872 of 2018

RSI (CO)
GMY (29/06/2021)



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