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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

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THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CMA.No.3363 of 2021 and CMP.No.19374/2021

R.Tamilarasan

...Appellant

-vs-

1. Hemapriya

2. Minor Sabari @ Tejash

...Respondents

(2nd respondent represented by

Respondent No.1his natural guardian Mother)

Civil Miscellaneous Appeal filed under Section 19 (3) of the Family Courts Act against the fair and decreetal order dated 23.03.2021 passed in I.A.No.1 of 2021 in O.P.No.3696/2018 on the file of the learned II Additional Family Court Judge, II Additional Family Court, Chennai.

For Appellant : Mr.A.Manojkumar

For Respondents : Mr.D.Ajith Kumar

JUDGMENT

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

Mr.R.Tamilarasan, husband of Mrs.Hemapriya-appellant herein, having been aggrieved by the impugned fair and decreetal order dated 23.03.2021 passed in I.A.No.1 of 2021 in O.P.No.3696/2018 by the learned II Additional Family Court Judge, II Additional Family Court, Chennai, thereby directing him to pay the interim maintenance of Rs.20,000/- per month to the 1st respondent-wife and her son-2nd respondent herein from the date of the petition, namely, 22.02.2021 with a further direction to pay a sum of Rs.25,000/- to the 1st respondent towards litigation expenses, has filed this appeal.

2.Learned Counsel appearing for the appellant-husband would state that the learned Family Court has erred in substantiating the claim of the wife in awarding interim maintenance on the basis of the financial capacity of the husband and other relevant factors, said to have been pleaded by the 1st



respondent-wife thereby wrongly believing that the appellant is running a Travel Agency business and a Restaurant and also deriving rental income from two houses located at Pencil Factory located near Mint, Chennai and Edapalayam, Redhills, Chennai. The real facts are that the appellant is running a Call Taxi on hire basis, driving the vehicle on his own as driver without even hiring out the said vehicle and there is no restaurant run by him. These aspects are to be clarified by filing an affidavit of assets and liabilities before the Family Court. But before filing the affidavit of Assets and Liabilities, accepting the case of the 1st respondent, the Family Court has reached a conclusion that the appellant-husband shall pay a sum of Rs.25,000/- every month towards interim maintenance to the respondents herein.

3. Learned Counsel appearing for the appellant-husband would further state that though an affidavit of assets and liabilities has to be filed as directed by the Apex Court before deciding the quantum of monthly interim maintenance, since the appellant was unable to run his call taxi during the pandemic situation, which is the only source for eking out his livelihood, he could not file the affidavit of assets and liabilities before the trial court. Therefore, if further more time is granted for filing the affidavit of assets and liabilities, he would satisfy the trial court in awarding the fair amount towards monthly maintenance. The learned Counsel would also state that so far as the payment of tuition fees of his son is concerned, he would pay the entire tuition fees through out and as he is a dutiful father, he would not evade from his liability at any point of time. But insofar as the payment of maintenance is concerned, he would pay a sum of Rs.10,000/- per month and in case of any reason, both the mother and the child fell ill that medical expenses also would be met with on his own. Therefore, the amount of interim maintenance fixed by the Family Court at Rs.20,000/- p.m. may be modified till the Family Court decides the matter on considering the affidavit of assets and liabilities to be filed by the appellant-husband shortly.

4. Mr.D.Ajith Kumar, learned Counsel appearing for the respondents, opposing the above prayer, would submit that while the respondents have moved an interlocutory application in I.A.No.01/2021 seeking interim maintenance stating that the appellant is running a Travel Agency, Restaurant as a partner therein and was also receiving a monthly rental income from two houses situated at Pencil Factory near Mint, Chennai and Edapalayam, Redhills, Chennai, the appellant has failed to file an affidavit of assets and liabilities, denying the same, therefore, the Family Court, taking into account the said fact that there is no any evidence on the part of the appellant on the above averments, ordered Rs.20,000/- towards interim monthly



maintenance for the respondents herein. Hence, with the minimum amount of Rs.20,000/-, the 1st respondent has to meet out the tuition fees of the 2nd respondent and food and other family expenses, therefore, the same cannot be interfered with.

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5. We find some merits on the submissions made by the learned Counsel for the respondents. However, since the affidavit of assets and liabilities has not been filed by the appellant and the appellant-husband also expressed his inability to file the affidavit of assets and liabilities in time before the Family Court due to covid-19 pandemic situation, without going into the merits and demerits of the allegation and counter allegation made by both the parties, we hereby issue the following directions:

1. the appellant-husband shall pay the entire tuition fees directly to the school of the 2nd respondent-son through out;

2. the appellant shall pay a sum of Rs.10,000/- towards monthly interim maintenance till the matter is decided by the Family Court; and 3. the appellant shall clear the admitted arrears of maintenance of Rs.1,00,000/- before the Family Court on the next date of hearing.

6. At this stage, learned Counsel for the respondents would submit that the tuition fees for this term has already been paid by the 1st respondent, therefore, the same has to be reimbursed by the appellant herein to the 1st respondent. Therefore, the appellant-husband is directed to pay the tuition fees of Rs.44,000/- said to have been paid by the 1st respondent-wife before the Family Court on the next hearing date, directly to her. Further, though there was a dispute in respect of the arrears of interim maintenance, the same would be considered by the Family Court after filing the affidavit of assets and liabilities by the appellant-husband within a period of four weeks from to-day.

7. With the above Observations and directions, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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

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Copy To

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

+2cc to Mr.A.Manojkumar, Advocate, S.R.No.68551, 68249

+2cc to M/s.M.Sathishkumar, Advocate, S.R.No.68253

CMA.No.3363 of 2021

SMI (CO)
RGA (27/12/2021)