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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.3468 of 2021

Mr.R.Devaraj .. Appellant

-vs-

S.Mary Srija .. Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the fair and decretal order dated 18.03.2021 made in I.A.No.4291 of 2018 in O.P.No.2447 of 2016 on the file of the II Additional Family Court, Chennai.

For Appellant :: Mr.K.Balasubramaniam

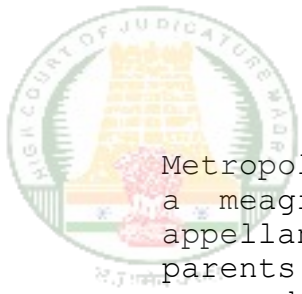
For Respondent/Caveator:: Mr.S.M.Muralidharan

JUDGMENT

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

This civil miscellaneous appeal has been directed against the fair and decretal order dated 18.3.2021 passed by the II Additional Family Court, Chennai in I.A.No.4291 of 2018 in O.P.No.2447 of 2016, directing the appellant to pay a sum of Rs.10,000/- per month towards interim maintenance from the date of petition i.e., 5.3.2018 and also to pay a sum of Rs.15,000/- towards litigation expenses to the respondent, pending disposal of the divorce proceedings initiated by the appellant/husband in O.P.No.2447 of 2016.

2. Learned counsel appearing for the appellant submitted that the marriage between the appellant and the respondent was solemnized according to Christian rites and customs on 15.5.2006 at the Parish Priest of Holy Trinity Church, Golden George Nagar, Chennai and out of the said wedlock, a female child namely D.Adline Liney was born on 12.3.2007, who is now aged about 14 years and continues to be in the custody of the respondent/mother. It is also stated that the appellant has studied 12th Standard and is working as a Driver in the



Metropolitan Transport Corporation Limited, Chennai and drawing a meagre salary. According to the appellant, whenever the appellant goes for duty, the respondent used to go to her parents house and stay there. It is further stated that the respondent is a Graduate in Science and working as a Nurse in a private hospital. However, misunderstanding arose between the appellant and the respondent on the ill advise given by the respondent's parents and at times, the respondent assaulted the appellant by pulling his hair and hitting on his face and scratching him with her nails in a fit of anger. In spite of all the harassment at the hands of the respondent, the appellant performed his duties as a dutiful husband. But the respondent, without any valid reason, left the matrimonial home on 7.5.2009. Therefore, the appellant filed a petition under Section 32 of the Indian Divorce Act seeking restitution of conjugal rights in I.D.O.P.No.71 of 2009 before the District Court, Tiruvallur. In the meantime, since the respondent accepted for reunion and joined the appellant, the said petition was dismissed as not pressed. But after six months, the respondent again left the matrimonial home and started picking up quarrels with the appellant. On 18.2.2016, she also lodged a false criminal case against the appellant and the appellant was released on bail. Since the respondent has continuously treated the appellant with cruelty and all the efforts taken by him to pacify her for reunion also ended in vain, he was constrained to file the petition for divorce under Section 10(1)(x) of the Indian Divorce Act, 1869 in O.P.No.2447 of 2016 before the II Additional Family Court, Chennai. Pending the above divorce proceedings, the respondent has filed the interlocutory application in I.A.No.4291 of 2018 under Section 36 of the Indian Divorce Act seeking interim maintenance of Rs.20,000/- per month and also a sum of Rs.25,000/- as litigation expenses. Learned counsel further submitted that the Court below, ignoring the fact that the respondent is working as a Nurse in a private hospital and earning a sum of Rs.25,000/-, without any documentary evidence, has ordered the payment of Rs.10,000/- per month as interim maintenance from 5.3.2018 together with the litigation expenses of Rs.15,000/- to the respondent. Hence, the impugned fair and decretal order passed by the Court below is liable to be interfered with, he pleaded.

3. Per contra, learned counsel appearing for the respondent submitted that although the respondent is working as a Nurse in a private hospital, she is unable to maintain herself and her daughter, who is now aged about 14 years and studying 10th Standard in Velammal Matriculation School with the meagre income of Rs.6,250/- per month. Considering the fact that the appellant is working as a Driver in the Metropolitan Transport Corporation Limited, Chennai and earning a decent salary, the Court below, taking into account the interest of the minor daughter who is



staying with her mother, has rightly ordered the payment of Rs.10,000/- per month as the monthly maintenance from the date of petition i.e., 5.3.2018 together with a sum of Rs.15,000/- towards litigation expenses to the respondent, pending disposal of the divorce proceedings, which does not call for any interference.

4. Having heard the learned counsel appearing for the parties, considering the submission made by the learned counsel appearing for the appellant that the appellant is ready for reunion by forgiving the act of the respondent in visiting the police station and making a criminal complaint, if she also agrees for reunion, pending the divorce proceedings, by order dated 17.12.2021, we directed both the parties to appear in the Court on 20.12.2021 at 2.15 p.m., along with their respective counsel.

5. Accordingly, when the matter has been taken up today, both the appellant and the respondent appeared before us. After counselling, although the appellant has agreed for reunion, the respondent only insisted for payment of the monthly interim maintenance to maintain herself and her daughter. Although we indicated to the learned counsel appearing for the appellant to settle the matter once and for all, the respondent was not forthcoming to such proposal. Therefore, we proceeded to hear the matter on merits.

6. The appellant, assailing the fair and decretal order, has produced a xerox copy of the pay slip issued by the Metropolitan Transport Corporation Limited, Chennai for the month of February, 2016 before us. A perusal of the same shows that the appellant earned a sum of Rs.22,787/- as gross salary and after deduction of a sum of Rs.3,956/- under various heads, the take home pay received was Rs.18,831/-. The respondent also frankly admitted that she is also working as a temporary Laboratory Technician and drawing a monthly salary of Rs.8,000/-. In view of the above, learned counsel appearing for the appellant stated that the payment of Rs.10,000/- per month as interim maintenance ordered by the Court below would not be justified and untenable, for the reason that the appellant has to take care of his family expenses and also to look after his aged and ailing mother. However, learned counsel appearing for the respondent submitted that the respondent has to take care of her daughter studying in 10th Standard.

7. Considering the facts and circumstances of the case that the appellant has to take care of his aged and ailing mother and the respondent also has to take care of her minor daughter studying in 10th Standard, modifying the impugned fair and decretal order so far as the payment of monthly maintenance is



concerned, we direct the appellant to pay a sum of Rs.8,000/- per month as interim maintenance from January, 2022 to the respondent on or before 10th day of every English calendar month regularly, till the disposal of the O.P.No.2447 of 2016 by the Court below. However, so far as the arrears of maintenance from March, 2018 to December, 2021 is concerned, the appellant is directed to pay the said sum of Rs.3,60,000/- (Rs.8000 x 45) to the respondent within a period of three months from the date of receipt of a copy of this order. However, the direction of the Court below for payment of Rs.15,000/- towards litigation expenses to the respondent remains unaltered.

8. Lastly, both the learned counsel appearing for the appellant and the respondent jointly submitted that since the divorce proceeding is pending from the year 2016, a direction may be issued to the Court below to dispose of the matter as expeditiously as possible. Accepting their joint request and considering the fact that the matter is pending from the year 2016, we direct the Court below to dispose of the O.P.No.2447 of 2016 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. Accordingly, the civil miscellaneous appeal stands disposed of in the above terms. Consequently, C.M.P.No.19982 of 2021 is closed. However, there is no order as to costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The V Additional Principal Judge
Full Additional Charge of
II Additional Family Court
Chennai.

+1 cc to Mr.S.M.Muralidharan., Advocate Sr.NO.68521

+1 cc to Mr.K.Balasubramaniam, Advocate Sr.NO. 68777

C.M.A.No.3468 of 2021

PA(CO)

A.SK(27.01.2022)