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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.3206 of 2021

Manikandan

...Appellant/Petitioner

-vs-

Vasavi

...Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, against the Fair and decreetal order passed by the learned Additional Principal Judge, Family Court, Coimbatore, in I.A.No.1 of 2019 in HMOP.No.410/2019 dated 18.01.2021.

For Appellant : Mr.C.B.Muralikrishnan
for M/s.V.Vijayakumar

For Respondent : ...

JUDGMENT

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

The matter was listed to-day under the caption, 'for admission.'

2. This Civil Miscellaneous Appeal has been directed against the fair and decreetal order passed by the learned Additional Principal Judge, Family Court, Coimbatore, passed in I.A.No.1 of 2019 in HMOP.No.410/2019 dated 18.01.2021.

3. Learned Counsel appearing for the appellant-husband assailing the findings and the conclusions reached by the learned Family Court in ordering the payment of Rs.50,000/- to the respondent-wife for her monthly maintenance and also for EMI to be payable for the housing loan submitted that the appellant has married the respondent, who was a divorcee with a female child, on 19.05.2020. While so, due to some matrimonial dispute that erupted between them, the appellant-husband has filed a



Divorce Petition in HMOP.No.410/2019 before the Additional Principal Family Court, Coimbatore, under Section 13(1) (i-a) of the Hindu Marriage Act, 1955, citing a reason that the respondent-wife has caused imminent cruelty. During the pendency of the said HMOP.No.410/2019, the respondent-wife has filed an interlocutory application in I.A.No.1/2019 seeking a sum of Rs.50,000/- towards her maintenance and Rs.26,000/- towards the payment of EMI to clear her Housing Loan, totalling a sum of Rs.76,000/- p.m. as the appellant is employed in Fong Lee Metal Industries Private Limited, 127, Pioneer Road, Singapore-639 594 as Mechanical Engineering Technician and drawing a monthly salary of Rs.3,50,000/- and above. According to the appellant, since the appellant has been punctually paying Rs.50,000/- every month, even before the said I.A.No.1/2019 was filed by the respondent-wife, the question of moving the said application does not arise at all. More over, in the application seeking maintenance, the respondent-wife has made a false pleading and although the appellant, admittedly, has been working in a company in Singapore, he is not getting the monthly salary as alleged by her. The learned Family Court, overlooking the fact that she is entitled to get only Rs.25,000/-, wrongly accepting her case for monthly maintenance, has ordered a sum of Rs.50,000/- towards maintenance payable within the 7th day of every succeeding English Calendar Month and the learned Family Court has also observed therein that after the entire alleged amount was settled, the amount paid as EMI shall be proportionately reduced from the sum of Rs.50,000/- and also directed the appellant to pay a sum of Rs.10,000/- towards litigation expenses. This approach adopted by the learned Family Court is unacceptable and unjustifiable. Therefore, the impugned order is liable to be set aside, he pleaded.

4. Continuing his arguments, learned Counsel for the appellant further submitted that when there were matrimonial disputes already pending between the parties on the ground that the respondent-wife has caused mental cruelty, adding fuel to fire, when she has not even filed any document to show that she has been paying any amount towards EMI for Housing Loan, directing the appellant-husband to pay monthly maintenance of Rs.50,000/- to the respondent to maintain her and also towards the EMI for Housing Loan is uncalled for. Moreover, the learned Judge has failed to see that the property was purchased by the appellant-husband jointly with the respondent-wife and only the construction of the house was made with the help of the housing loan and that was also paid by the appellant without any default. The truthfulness of all these facts would be revealed only during the trial. Therefore, an error has been committed by the trial court by passing the impugned order, hence, the same is liable to be interfered with.

5. We are unable to find any justification whatsoever in the submissions of the learned Counsel for the appellant. The



reason being that firstly, it is not in dispute that the appellant having married the respondent, who was a divorcee with one female child, facing matrimonial dispute has filed HMOP.No.410/2019 before the learned Additional Principal Family Court, Coimbatore, seeking divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. During the pendency of the said case, the respondent-wife has moved I.A.No.1/2019 seeking a sum of Rs.76,000/-, namely, Rs.50,000/- p.m. towards maintenance and Rs.26,000/- p.m. towards the EMI for the Housing Loan besides Rs.10,000/- towards litigation expenses. In her application seeking maintenance, the respondent-wife pleaded that when both the appellant and the respondent were working in the same office, after love affair, they resolved to enter into the matrimonial life. It was, at that time, the respondent-wife was also having a child and she was stopped from coming to the office. Therefore, she claimed that she was unemployed and to maintain her and for the payment of EMI towards the housing loan, the appellant-husband is liable to pay the monthly maintenance.

6. Secondly, the appellant-husband has also filed a counter affidavit. A perusal of the same reveals that nowhere the appellant-husband has denied the averment made by the respondent-wife that his monthly salary is Rs.3,50,000/- and above. As a matter of fact, when the respondent makes a claim that the appellant has been receiving a monthly salary of Rs.3,50,000/- and above, it is the bounden duty of the appellant-husband either to disprove the same by making a specific denial or to admit the same. In the present case, the appellant-husband although admitted his employment in Fong Lee Metal Industries Private Limited, 127, Pioneer Road, Singapore-639 594 has not come forward to produce a single salary slip to show his monthly salary that clearly shows that he has failed to discharge his obligation before the Family Court.

7. Thirdly, when the respondent has made a specific pleading in her counter affidavit filed in the main HMOP and also in the affidavit filed in I.A.No.1/2019 that the appellant has been receiving a monthly salary of Rs.3,50,000/- and above, the non-denial of the said allegation with substantial evidence will go to show that the said averment is an admitted fact. The appellant has filed a counter affidavit making a blank in respect of his salary and subsequently the same was filled with handwriting showing the monthly salary at Rs.90,000/-. Since, he has not produced the pay slip to substantiate the said contention, that created a strong doubt. Moreover, when he has received the impugned order, directing him to pay a sum of Rs.50,000/- towards monthly maintenance, it is expected from him that he should have filed the monthly salary slip atleast before this Court to show that his salary is not Rs.3,50,000/- and above. As he has failed to file the monthly salary slip which is a non-speaking evidence before the trial court and also



consistently before this Court, it goes without saying that something wrong with him and he is not willing to disclose his actual monthly salary. Fourthly, when the appellant himself has admitted that the respondent wife alone has been paying the EMI towards the housing loan at the rate of Rs.26,000/-, we do not find any error in the impugned order directing the appellant to pay a sum of Rs.50,000/- towards maintenance including Rs.26,000/- towards EMI for Housing Loan because the learned Family Court has also observed therein that after the entire alleged amount was settled, the amount paid as EMI shall be proportionately reduced from the sum of Rs.50,000/-. Therefore, for the aforementioned reasons, we are unable to find any infirmity or illegality in the fair and decreetal order passed by the learned Additional Principal Judge, Family Court, Coimbatore, in I.A.No.1 of 2019 in HMOP.No.410/2019 dated 18.01.2021.

8. In the result, the Civil Miscellaneous Appeal fails and the same is accordingly dismissed at the admission stage itself. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Additional Principal Judge,
Family Court, Coimbatore.

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

C.M.A.No.3206/2021

SS (CO)
PR (07/02/2022)