



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.10.2021

CORAM:

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN
and
THE HONOURABLE MR.JUSTICE R. PONGIAPPAN**

**C.M.A(MD) No.887 of 2021
and C.M.P (MD)No.8362 of 2021**

R.Manimozhi ... Appellant/Respondent/Petitioner

-VS-

J.Jeya ... Respondent/Petitioner/Respondent

PRAYER : Civil Miscellaenous Appeal is filed under Section 19 of the Family Courts Act against the fair and decreetal order passed by the Family Judge, Ramanathapuram in I.A.No.91 of 2020 in H.M.O.P.No.116 of 2019 dated 11.11.2020.

For Appellant :Mr.K.Navaneetharaja

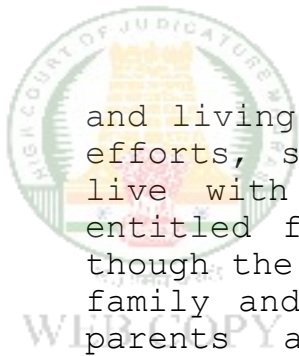
J U D G M E N T

(Judgement of the Court was made by V. BHARATHIDASAN, J.)

This Civil Miscellaneous Appeal is filed against the order passed by the learned Judge, Family Court, Ramanathapuram in I.A.No.91 of 2020 in H.M.O.P.No.116 of 2019 dated 11.11.2020.

2. The appellant herein is the husband, who has filed H.M.O.P.No.116 of 2019, under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights. Pending the above application, the respondent herein/wife has filed I.A.No.91 of 2020 under Sections 24 and 26 of the Hindu Marriage Act seeking interim alimony of Rs.40,000/- to maintain her and minor child and Rs.25,000/- towards legal expenses. The trial court, after considering the materials on record, ordered the appellant to pay Rs.15,000/- per month towards interim maintenance for the wife and minor child. Challenging the above order, the present appeal has been filed.

3. Mr.K.Navaneetha Raja, learned counsel appearing for the appellant would vehemently contend that, the petition seeking restitution of conjugal rights has been filed by the appellant/husband, as the respondent/wife is voluntarily deserted



and living separately. According to the appellant, despite his best efforts, she is not willing to return to the matrimonial home to live with the appellant, therefore, the respondent/wife is not entitled for maintenance. It is his further submission that even though the appellant is working as Teacher, he is maintaining a big family and he is taking care of the medical expenses of his aged parents and therefore, he is not in a position to pay Rs.15,000/- per month, which is very excessive. He would also submit without considering all the aspects, the Family Court has ordered maintenance and therefore, the same may be set aside.

4. We have heard the submissions made by the learned counsel for the appellant and perused the materials available on record.

5. The petition filed by the appellant for restitution of conjugal rights is pending and the respondent/wife is also contesting the above petition on various grounds. It is admitted fact that the wife is living along with the minor child. It is also stated that she is having no means to maintain herself and the child. The appellant is working as Teacher and getting monthly salary of Rs.52,000/-. The issue whether the respondent/wife deserted the husband or not is to be decided based on the evidence after trial, merely because the appellant filed the petition seeking restitution of conjugal rights, it will not debar the respondent/wife seeking for maintenance.

6. Considering the above facts, we are of the considered view that the learned Judge, Family Court, Ramanathapuram has rightly ordered Rs.15,000/- per month towards maintenance and it cannot be considered as excessive and we find no merit in this appeal. However, considering the fact that H.M.O.P is of the year 2019, we direct the learned Judge, Family Court, Ramanathapuram, to dispose of H.M.O.P.No.116 of 2019 on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

7. With the above direction, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

CM



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Judge, Family Court, Ramanathapuram.

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MGJ(22.10.2021) 3P 2C