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C.M.A.No.220 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2022

CORAM

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A. No.220 of 2022

and

C.M.P.No.1516 of 2022

Lucas Daniel Raj,
S/o. Noel Balasamy,
Rep. by his Power Agent.

... Appellant

Vs.

Pertreesia Maria
W/o.Lucas Daniel Raj

... Respondent

(Cause title accepted vide Court order dated 20.01.2022 made in C.M.P.Nos.529 and 530 of 2022 in C.M.A.SR.No.1295 of 2022 by RSMJ)

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against I.A.No.6 of 2020 in O.P.No.4741 of 2019 on the file of the III Additional Principal Judge, Family Court, Chennai dated 06.12.2021.

For Appellant

: Ms.Shabnam Banu
Assisted by Mr.T.Sushil Sarayu
and Mr.Naren Gautham

For Respondent

: Ms.Revathi Radhakrishnan



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JUDGMENT

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The appeal is filed by the appellant/ husband aggrieved by the grant of maintenance by the learned III Additional Principal Judge, Family Court, Chennai, in I.A.No.6 of 2020 in O.P.No.4741 of 2019 wherein the appellant was directed to pay Rs.30,000/- per month as interim maintenance and Rs.25,000/- per month towards litigation expenses to the respondent herein. The marriage of the appellant and the respondent was solemnised on 05.02.2018 at Chennai. The respondent left the matrimonial home due to differences on 10.05.2018. The appellant filed a petition for restitution of conjugal rights in I.D.O.P.No.4741 of 2019 under Section 32 of the Indian Divorce Act, 1869, on 16.10.2019. Pending the said petition, the respondent herein filed I.A.No.6 of 2020 on 31.08.2020 for interim maintenance. Meanwhile, it appears that a criminal complaint was lodged against the appellant and his relatives by the respondent. The appellant filed his counter in the said I.A.No.6 of 2020 on 30.11.2020.

2. The learned Judge found that the respondent had stated that the



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appellant was earning Rs.3,00,000/- per month and that the appellant had not denied the said fact. The learned Judge found that the appellant had not filed his affidavit of assets in spite of several opportunities and the respondent had filed her affidavit of assets. The learned Judge thereafter found that the respondent was entitled to get maintenance and the litigation expenses. The learned Judge directed the appellant to pay a sum of Rs.30,000/- per month towards interim maintenance from the date of filing of the petition and further directed the appellant to pay a sum of Rs.25,000/- towards litigation expenses. The appellant aggrieved by the said order has filed the above appeal.

3. The learned counsel for the appellant submitted that:

a. The grant of interim maintenance is unsustainable and erroneous and that the maintenance cannot be awarded on mere filing of petition. She further submitted that the appellant is working in a Multi National Company and it was not possible for him to appear before the Court on all hearings. No sufficient opportunity was given for the appellant to file his affidavit of assets and liabilities.



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b. It was the appellant who took efforts for re-union and hence he filed O.P.No.4741 of 2019 for restitution of conjugal rights. The respondent on her own making spoilt the chances of re-union by filing a false complaint against the appellant and his relatives. The appellant was therefore forced to file a memo in I.D.O.P.No.4741 of 2019 praying for permission to withdraw the said O.P. for restitution of conjugal rights. Strangely, the Family Court did not permit the withdrawal of the said petition since the respondent herein had made an endorsement in the said memo stating that she had strong objections to the withdrawal of the petition. Thereafter, she filed the objections stating that she was entitled to receive interim maintenance pending litigation and when there is a petition for interim maintenance, the respondent cannot be allowed to withdraw the main O.P. The learned counsel therefore submitted that the learned Judge erred in not allowing the withdrawal of O.P.No.4741 of 2019.

c. Further, the respondent had also filed M.C.No.254 of 2020 in the same Court under Section 125 CrPC for maintenance. No notice was issued to the appellant in the said petition though the parties have been appearing through their counsel as well as in person before the Court in the other



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proceedings. She submitted that the respondent had deliberately kept the service of notice pending and had not disclosed the filing of the petition in the other proceedings. The respondent had indulged in forum shopping and therefore not entitled to any relief.

4. The learned counsel for the respondent submitted that the appellant had not denied the fact that he was earning Rs.3,00,000/- per month. He was bound to maintain the respondent. The respondent had valid reason for leaving the matrimonial home. The appellant had not filed the affidavit of assets and liabilities in spite of several opportunities given by the learned Judge. She filed maintenance case under Section 125 of CrPC only after the memo filed by the appellant to withdraw the main petition filed for restitution of conjugal rights. The appellant ought not to have withdrawn the petition for restitution of conjugal rights when the interim application for maintenance was pending before the learned Judge.

5. Heard, Ms.Shabnam Banu learned counsel for the appellant and Ms.Revathi Radhakrishnan, learned counsel for the respondent and perused



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the entire materials on record.

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6. Admittedly, the respondent has filed a petition for maintenance under Section 125 CrPC in M.C.No.254 of 2020 before the Family Court, Chennai. The appellant had filed a memo of withdrawal in O.P.No.4741 of 2019 on 23.11.2020. The respondent filed an objection to the said memo on 27.08.2021. We are informed that the said memo is still pending consideration before the Family Court. We also note that M.C.No.254 of 2020 was filed on 27.11.2020, four days after the memo of withdrawal filed by the appellant in O.P.No.4741 of 2019. In view of the pendency of M.C.No.254 of 2020 before the Family Court, we are not inclined to pass any order on merits considering the rival submissions made by the appellant and the respondent. Any order made by us may prejudice the rights of the parties before the Family Court in M.C.No.254 of 2020. Though the appellant had filed a memo for withdrawal, the Family Court had kept it pending till now. In view of the filing of M.C.No.254 of 2020 by the respondent there was no reason why the Family Court had not passed any orders on the memo of withdrawal filed by the appellant. The parties can



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now put forth their respective claims with regard to the right of the respondent to claim maintenance and with regard to quantum, if such a right is established.

7. However, in the facts and circumstances, we find that it would be in the interest of justice if the order passed by the Family Court awarding maintenance is restricted for the period between 31.08.2020, the date on which I.A.No.6 of 2020 was filed by the respondent and 23.11.2020, the date on which the memo of withdrawal in O.P.No.4741 of 2019 was filed by appellant. O.P.No.4741 of 2019 on the file of the III Additional Principal Judge, Family Court, Chennai, shall be treated as withdrawn on 23.11.2020. The respondent is entitled to maintenance at the rate of Rs.30,000/- per month for the said period. The order of the learned III Additional Principal Judge, Family Court, Chennai is set aside on all other aspects leaving it open for the parties to let in evidence in M.C.No.254 of 2020. While holding that the respondent is entitled to maintenance for a period of four months between August, 2020 and November, 2020 at Rs.30,000/- per month, we make it clear that the Family Court should independently consider the



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evidence placed before it to determine whether the respondent is entitled to maintenance and if so the quantum while deciding M.C.No.254 of 2020 without being influenced by any of the observations made in the present order.

8. While admitting this appeal, this Court had granted stay of the order passed in I.A.No.6 of 2020 on the condition that the respondent shall deposit a sum of Rs.3,00,000/- to the credit of O.P.No.4741 of 2019 on the file of III Additional Principal Judge, Family Court, Chennai. It is reported by both the learned counsels that the said amount was deposited pursuant to the order of this Court. The respondent shall be at liberty to file appropriate application to withdraw the maintenance amount for four months at the rate of Rs.30,000/- per month (from August 2020 to November 2020). The remaining amount shall remain in deposit to the credit of O.P.No.4741 of 2019. The same shall be disbursed either to the appellant or the respondent depending on the decision taken in M.C.No.254 of 2020. Till then the Family Court shall deposit the remaining amount in a Fixed Deposit in any Nationalised Bank so that it bears interest. The III Additional Principal



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Judge, Family Court, Chennai is directed to dispose of M.C.No.254 of 2020 as expeditiously as possible and in any event within a period of three months from the date of receipt of a copy of this order.

9. With the above observations, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

[V.M.V., J.] [S.M., J.]

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Index : Yes/ No
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To:
The III Additional Principal Judge,
Family Court, Chennai.



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AND
SUNDER MOHAN, J.

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