



WEB COPY



C.M.A.No.1062 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.1062 of 2018
and C.M.P.No.8738 of 2018

G.Chinnasamy

... Appellant

Vs.

C.Ezhilmani Mary Elizabeth @ Induja

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Courts Act, 1984, against the order and decree dated 15.02.2018 made in I.A.No.2660 of 2016 in F.C.O.P.No.4576 of 2011 on the file of the VII Additional Family Court, Chennai.

For Appellant : Mr.T.P.Sekar

For Respondent : Ms.E.Swetha
for M/s.T.K.S.Gandhi

J U D G M E N T



C.M.A.No.1062 of 2018

WEB COPY [Judgment of the Court was delivered by V.M.VELUMANI,J.]

The present appeal is filed challenging the order of the Family Court dated 15.02.2018 made in I.A.No.2660 of 2016 in F.C.O.P.No.4576 of 2011. The appellant filed O.P.No.4576 of 2011 under Section 27 (1)(d) of the Special Marriages Act, for dissolution of marriage on the ground of cruelty. In the said O.P., the respondent filed counter statement in the month of June, 2013. The respondent filed I.A.No.2660 of 2016 under Section 24 of the Hindu Marriages Act, claiming a sum of Rs.10,000/- towards interim maintenance to the respondent and her daughter.

2.According to the respondent, the marriage between the appellant and respondent was conducted on 07.05.2009 at Thiruverkadu Temple and marriage was registered on 15.06.2009 under the Special Marriages Act, 1954. It is a love marriage. The appellant and respondent belong to different religion and caste. The respondent further made various allegations against the appellant. The appellant filed O.P.No.4576 of 2011 for divorce on the ground of cruelty. The respondent, in the year 2016, filed I.A.No.2660 of



C.M.A.No.1062 of 2018

2016, claiming a sum of Rs.10,000/- per month towards interim maintenance for herself and her daughter. According to the respondent, she is working as a Lecturer in Annai Violet Arts and Science College, Ambattur, Chennai and was earning a sum of Rs.10,000/- per month, which is not sufficient to maintain herself and minor daughter who requires special treatment. The School fee for the child is Rs.20,000/- per month. The child suffered with cognitive disorder coupled with other ailments. The respondent is employed in TASMACH as a Manager and is earning a sum of Rs.20,000/- per month and also getting a sum of Rs.30,000/- as commission. With meagre income of the respondent, she is not able to maintain herself and her daughter.

3.The appellant filed counter affidavit and denied all the allegations made by the respondent. The appellant made allegations against the respondent and submitted that the respondent is working as a Lecturer in Annai Violet Arts and Science College and is getting Rs.30,000/- per month. He filed O.P. in the year 2011 and the respondent is dragging on the proceedings for more than 6 years. When the O.P. was posted for cross-examination of appellant as P.W.1, she has filed the present petition for



C.M.A.No.1062 of 2018

interim maintenance only to prolong the proceedings in the divorce petition.

According to the appellant, he is working as a Supervisor in TASMAC and his monthly salary is Rs.7,500/- and take home salary is Rs.6,520/-, after deduction of Rs.980/- towards EPF, FBF, HF and AIDR. The appellant is residing in a rented house and he is spending Rs.3,000/- towards rent and has to maintain aged mother and hence, prayed for dismissal of the petition.

4.The learned Judge, after considering the averments in the affidavit and counter affidavit, directed the appellant to pay a sum of Rs.7,500/- per month as interim maintenance to the respondent and her daughter from the date of petition i.e., 15.11.2016.

5.Against the said order dated 15.02.2018 made in I.A.No.2660 of 2016 in O.P.No.4576 of 2011, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant reiterated the averments made in the counter affidavit filed in I.A. and produced salary



C.M.A.No.1062 of 2018

certificate filed in the typed set of papers issued on 25.11.2016 to show that he was getting Rs.7,500/- per month as gross salary and after deduction, his take-home salary is Rs.6,520/-. At the time of hearing, the learned counsel appearing for the appellant produced a salary certificate dated 26.06.2019, stating that the gross salary of the appellant is Rs.10,250/- and take-home salary after deduction is Rs.8,885/-. The learned counsel appearing for the appellant submitted that the respondent is working in Annai Violet Arts and Science College and is getting Rs.30,000/- per month and she is capable of maintaining herself and child and prayed for setting aside the order of the learned Judge and allowing the appeal.

7.Per contra, the learned counsel appearing for the respondent submitted that the respondent is not working in the said College. The appellant is earning more than Rs.20,000/- per month. The daughter is suffering from ailments and School fees of her daughter comes to Rs.20,000/- per month. Apart from that, the respondent has to pay a sum of Rs.500/- per month towards special tuition for mentally retarded child. The respondent is unable to maintain herself and the minor child and hence, prayed for



C.M.A.No.1062 of 2018

dismissal of the appeal.

WEB COPY

8.Heard the learned counsel appearing for the appellant as well as the respondent and perused the entire materials available on record.

9.It is an admitted fact that both the appellant and respondent are living separately from 2011. It is also not disputed that daughter was born in the wedlock and she has certain illness. According to the appellant, he is earning a sum of Rs.7,500/- per month as gross salary and his take-home salary is Rs.6,520/-. The appellant has filed salary certificate dated 25.11.2016 in the typed set of papers. The appellant has not given any reason as to why he has not produced that certificate before the Family Court. Today, he has produced the salary certificate dated 26.06.2019 before this Court. The appellant is duty bound to maintain his wife and daughter. Taking into consideration the fact that the respondent has admitted in her affidavit that she is working as Lecturer in Annai Violet Arts and Science College and getting Rs.10,000/- per month and the gross salary of the appellant as on 2019 is Rs.10,250/- and take-home salary is Rs.8,885/-, it will be in the interest of justice to modify



C.M.A.No.1062 of 2018

the order of the learned Judge and direct the appellant to pay a sum of Rs.6,000/- per month towards interim maintenance, from the date of application.

10.The learned counsel appearing for the appellant submitted that as per the interim order of this Court dated 22.10.2019, the appellant is continuing to pay a sum of Rs.6,000/- per month to the respondent and daughter towards interim maintenance. The learned counsel appearing for the appellant submitted that there is no arrears. On instructions from the respondent, the learned counsel appearing for the respondent submitted that there is no arrears as on today. O.P. is of the year 2011. The learned counsel appearing for the appellant submitted that O.P. is posted for evidence on behalf of the respondent. The learned VII Principal Judge, VII Additional Family Court, Chennai is directed to dispose of O.P.No.4576 of 2011 as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of a copy of this judgment.

With the above direction, this Civil Miscellaneous Appeal is partly



C.M.A.No.1062 of 2018

allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

WEB COPY

(V.M.V., J) (S.S., J)
06.07.2022

Index : Yes / No

gsa

To

1.The VII Principal Judge,
VII Additional Family Court,
Chennai

2.The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.1062 of 2018

**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

(gsa)

C.M.A.No.1062 of 2018

06.07.2022