



C.M.A.No.747 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM:

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

C.M.A.No.747 of 2021
and C.M.P.No.4452 of 2021

A.Anandan

... Appellant

Vs.

Geetha

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19(3) of Family Courts Act, 1984, against the order dated 28.02.2020 made in I.A.No.1 of 2019 in H.M.O.P.No.42 of 2018 on the file of the Sub Court, Gudiyatham.

For Appellant : Mr.R.Bhagawat Krishna

For Respondent : Mr.N.Manokaran

J U D G M E N T



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(Judgment of the Court was delivered by V.M.VELUMANI,J.)

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This Civil Miscellaneous Appeal has been filed by the appellant/husband against the order dated 28.02.2020 made in I.A.No.1 of 2019 in H.M.O.P.No.42 of 2018 on the file of the Sub Court, Gudiyatham.

2.The appellant/husband filed H.M.O.P.No.42 of 2018 (earlier F.C.O.P.No.165 of 2017 on the file of the Principal Family Court, Vellore) on the file of the Sub Court, Gudiyattam, under Section 13(1)(i-a) & (i-b) of Hindu Marriage Act, 1955, for dissolution of marriage between the appellant and respondent, conducted on 20.08.2008. In the said H.M.O.P., the respondent/Wife filed I.A.No.1 of 2019 under Section 24 of the Hindu Marriage Act, for a direction to the appellant to pay a sum of Rs.25,000/- each towards monthly maintenance to the respondent and her minor son and a sum of Rs.25,000/- towards litigation expenses.

3. According to the respondent, the appellant is running provisional store in the name and style of 'B.Alaguvel Maligai shop', he is also doing money lending business and is getting income of Rs.2,00,000/- per month.



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The appellant also owns immovable property worth about Rs.3 Crores and therefore, prayed interim maintenance for herself and her minor son and also for litigation expenses.

4.The appellant filed counter affidavit denying all the averments made by the respondent in the I.A. and stated that his maternal uncle viz., Raju is the owner of 'B.Alaguvel Maligai shop' and appellant is working in the said shop as a Salesman on daily wage of Rs.450/- per day. The appellant is also maintaining his younger brother, who is suffering from Schizophrenia. He is ready to pay a sum of Rs.3,000/- as monthly maintenance to the respondent.

5.Before the learned trial Judge, both the appellant as well as respondent did not let in any oral and documentary evidence.

6.The learned trial Judge by the order dated 28.02.2020 made in I.A.No.1 of 2019 in H.M.O.P.No.42 of 2018, directed the appellant to pay a sum of Rs.9,000/- per month to the respondent and her minor son towards interim maintenance and a sum of Rs.15,000/- towards litigation expenses.

7.Challenging the said order of the learned trial Judge, the appellant has



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come out with the present appeal.

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8.The learned counsel appearing for the appellant reiterated the averments made in the counter affidavit filed in support of I.A.No.1 of 2019 and submitted that as per the order of the learned trial Judge, the appellant has paid a sum of Rs.75,000/- by way of Demand Draft bearing No.924393 dated 19.04.2021 drawn on Tamil Nadu Mercantile Bank, Gudiyatham Branch and also continued to pay a sum of Rs,5,000/- every month to the respondent. In the main H.M.O.P., the respondent has not filed counter statement and only to drag on the proceedings, she has come out with present I.A. and prayed for setting aside the order of the learned trial Judge and allowing this appeal.

9.The learned counsel appearing for the respondent reiterated the averments made in the affidavit filed in the said I.A. and submitted that appellant is owning immovable properties worth about Rs.3 Crores, he is also doing money lending business and owning provisional store and is capable of paying Rs.9,000/- towards monthly maintenance as ordered by the learned



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trial Judge. The learned counsel further submitted that the appellant is not paying maintenance amount as ordered by this Court regularly and is paying only lump sum amount and prayed for dismissal of this appeal.

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

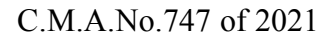
11.From the materials on record, it is seen that respondent has claimed that appellant is running provisional store in the name and style of 'B.Alaguvel Maligai shop' and is doing money lending business and is earning Rs.2,00,000/- per month. Before the learned trial Judge, the respondent has not let in any evidence to substantiate the said contention that the appellant is earning Rs.2,00,000/- per month. On the other hand, it is the case of the appellant that provisional store belongs to his maternal uncle, license stands in the name of his uncle and appellant is working as Salesman in the provisional store as daily wager and he was paid Rs.450/- per day. It is further case of the appellant that respondent has suppressed the fact that earlier she has filed



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M.C.No.22 of 2017 and D.V.C.No.9 of 2017 on the file of the Judicial Magistrate's Court, Gudiyatham. The respondent has not filed counter statement in the main H.M.O.P. filed by the appellant for dissolution of marriage. The intention of the respondent is only to drag on the proceedings. Inasmuch as respondent has not produced any materials to show that appellant is earning Rs.2,00,000/- per month and the contention of the appellant is that he is earning only Rs.450/- per day as Salesman in the provisional store, the order of the learned trial Judge directing the appellant to pay a sum of Rs.9,000/- per month to the respondent and her minor son is liable to be set aside and is hereby set aside. In the C.M.P.No.4452 of 2021 in C.M.A.No.747 of 2021, this Court, by the order dated 09.03.2021, granted interim stay directing the appellant to pay a sum of Rs.5,000/- towards interim maintenance from the date of the impugned order. According to the learned counsel appearing for the appellant, the appellant has paid the amount up to May 2022. The learned counsel appearing for the respondent submitted that the respondent has received maintenance amount up to April 2022.

12.Considering all the above materials on record and contention of the



13. With the above directions, this Civil Miscellaneous Appeal is partly



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

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

24.06.2022

Index : Yes / No

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To

1.The Subordinate Judge
Motor Accident Claims Tribunal
Gudiyatham.

2.The Section Officer
VR Section
High Court
Madras.



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

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and C.M.P.No.4452 of 2021

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