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C.M.A.No.1487 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

CORAM :

**THE HON'BLE MR. JUSTICE R.MAHADEVAN
and
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

C.M.A.No.1487 of 2018
and C.M.P.No.11816 of 2018

K.E.Gnanavelu

...Appellant

Versus

1.R.Indumathi

2.G.Thejashri (Minor)
Rep. by guardian/mother

...Respondents

This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984 against the order dated 20.03.2018 made in I.A.No.422 of 2017 in O.P.No.146 of 2016 on the file of the 1st Additional Family Court at Chennai.

For Appellant : Mr.M.Mohan

For Respondent - 1 : Mr.P.Kanthan

For Respondent – 2 : Minor represented by R1



C.M.A.No.1487 of 2018

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*(Judgment of the Court was delivered by **R.MAHADEVAN, J.**)*

Challenging the order dated 20.03.2018 passed by the learned I Additional Principal Judge, I Additional Family Court, Chennai in I.A.No.422 of 2017 in O.P.No.146 of 2016, the appellant has preferred this Civil Miscellaneous Appeal.

2. The brief facts of the case are as follows:

The appellant and first respondent are husband and wife. They got married on 31.10.2011 as per the Hindu rites and customs. The second respondent is the only daughter born through their wedlock. Due to misunderstanding arose between the parties, they were separated and the appellant/husband filed a petition in H.M.O.P.No.146 of 2016 before Family Court, Chennai seeking divorce. Pending the same, the first respondent/wife filed an Interlocutory Application in I.A.No.422 of 2017 in H.M.O.P.No.146 of 2016 under Section 24 of the Hindu Marriage Act 1955, seeking interim monthly maintenance of Rs.10,000/- to her and Rs.20,000/- to her minor daughter/second respondent and Rs.20,000/- towards litigation expenses. The learned I Additional Principal Judge, Chennai vide order dated 20.03.2018, partly allowed the said application and directed the appellant/husband to pay a



C.M.A.No.1487 of 2018

sum of Rs.5,000/- per month to the minor daughter/second respondent as interim maintenance from the date of application viz., 06.10.2016 and further, directed him to pay the litigation expenses of Rs.10,000/- to the first respondent/wife. Aggrieved by the said order, the appellant/husband has come up with the present Appeal.

3.The learned counsel for the appellant / husband submitted that the actual monthly take home salary of the appellant / husband is less than Rs.10,000/-, whereas the first respondent / wife is working in an MNC company and earning a sum of Rs.25,000/- per month and that, she has already given up her claim of interim maintenance at the time of hearing the interim maintenance application and hence, she is able to maintain herself and the second respondent / minor daughter. However, the Family Court directed the appellant/ husband to pay a sum of Rs.5,000/- per month towards interim maintenance to his minor daughter / second respondent. Therefore, the learned counsel sought to allow this appeal by setting aside the order of the Family Court, awarding interim maintenance to the second respondent.

4. Per contra, the learned counsel for the respondents submitted that considering the income and other relevant factors of the appellant / husband,



C.M.A.No.1487 of 2018

the Family Court has awarded only a meagre sum of Rs.5,000/- towards monthly interim maintenance to the second respondent / minor daughter alone, and therefore, the same need not be interfered with by this court.

5. Heard both sides and perused the materials placed before this court.

6. It is seen that the appellant / husband filed HMOP seeking divorce. During the pendency of the same, the respondents preferred I.A.No.422 of 2017 seeking interim maintenance for both of them. However, during the course of hearing, the first respondent / wife restricted the claim only in respect of the second respondent / minor daughter. The Family Court awarded a sum of Rs.5,000/- towards monthly interim maintenance to the second respondent / minor daughter, by the order impugned herein.

7. Though the learned counsel for the appellant / husband raised a plea that the first respondent / wife is earning more than the appellant / husband and she is able to maintain the second respondent / minor daughter, the same cannot be accepted by this court, in view of the legal principle that the father would be obliged to maintain his daughter even after she has attained majority and his financial inability *ipso facto* does not absolve him of his moral duty to



C.M.A.No.1487 of 2018

maintain her. Further, the Family Court, after taking note of all the factual aspects and the evidence produced before it, awarded only a sum of Rs.5,000/- per month towards interim maintenance to the second respondent / minor daughter, which in the opinion of this court, seems to be reasonable and the same does not call for any interference. However, considering the fact that the appellant's monthly take home salary is less than Rs.10,000/- and he has to pay arrears of interim maintenance at Rs.1,85,000/- to his minor daughter/second respondent, this court directs the appellant/husband to pay the arrears of interim maintenance in ten equal installments. The appellant / husband shall pay the first instalment on or before 05.01.2023 and thereafter, continue to pay the remaining 9 equated installments along with monthly maintenance on or before 5th day of every English calendar month, without fail.

8. With the above directions, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J.) (J.S.N.P., J.)
09.12.2022

mrr

Index : Yes/No

Speaking Judgment (or) Non-Speaking Judgment

R.MAHADEVAN, J.
and



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C.M.A.No.1487 of 2018

J.SATHYA NARAYANA PRASAD, J.

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To

1. The I Additional Principal Judge,
Additional Family Court – I,
Chennai.
2. The Public Prosecutor,
High Court,
Madras.

C.M.A.No.1487 of 2018

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