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C.M.A.No.1484 of 2021
and C.M.P.No.8507 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1484 of 2021
and C.M.P.No.8507 of 2021

M.Uma Maheshwari

...Appellant

Vs.

Murugiah

...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, to set aside the fair and decreetal order dated 16.03.2021 passed by the learned V Additional Family Court, Chennai in I.A.No.1 of 2020 in O.P.No.2096 of 2019.

For Appellant : M/s.R.Revathi
For Respondent : M/s.C.Sangamithirai



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J U D G M E N T

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(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The above appeal is filed by the wife aggrieved by the quantum of maintenance awarded in I.A.No.1 of 2020 in O.P.No.2096 of 2019 on the file of the learned V Additional Family Court, Chennai.

2(a). The respondent herein had filed a petition for divorce on the ground of desertion and cruelty against the appellant herein in O.P.No.2096 of 2019.

(b) Pending the above divorce petition the appellant filed I.A.No.1 of 2020 praying for interim maintenance of Rs.35,000/- (Rupees Thirty Five Thousand only) and Rs.20,000/- (Rupees Twenty Thousand only) towards litigation expenses. The appellant claimed that the respondent's monthly income is Rs.51,000/- (Rupees Fifty One Thousand only). The appellant has stated in the said petition that she was sent out of the matrimonial home on 30.10.2015 by the respondent herein since she did not agree to sell the property in her name as demanded by the respondent. The appellant further pleaded that the respondent promised to pay a maintenance of Rs.10,000/- (Rupees Ten Thousand only) per month to her. However, he failed to keep up his promise.



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After a prolonged struggle, repeated requests and interference of elders the respondent agreed to pay Rs.2,500/- (Rupees Two Thousand Five Hundred only) per month and thereafter increased it to Rs.5,000/- (Rupees Five Thousand only) from January 2016. From January 2019 onwards he stopped paying monthly maintenance and stopped communicating with her. She filed a complaint before All Women Police Station, Thirumangalam, Chennai seeking help. Thereafter, the respondent filed the divorce petition. The appellant claimed that the respondent was getting Rs.26,000/- (Rupees Twenty Six Thousand only) as monthly pension, Rs.15,000/- (Rupees Fifteen Thousand only) per month as an audit assistant in a firm and a rent of Rs.10,000/- (Rupees Ten Thousand only) per month from residential property at Trichy.

(c) The respondent herein filed counter affidavit stating that the appellant was his own uncle's daughter and that since his uncle was very poor he had borne the entire marriage expenses. He also spent substantial money for his daughter's marriage and that he never forced the appellant to sell any property. He also denied that he was earning a sum of Rs.51,000/- (Rupees Fifty One Thousand only) per month. The respondent further stated in his counter that he was only getting a monthly pension of Rs.26,000/- (Rupees Twenty Six Thousand only) . He was not earning any rental income because there is no



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tenant in the said flat. Further, he is not earning any income from any Audit Firm. Out of the monthly pension of Rs.26,000/- (Rupees Twenty Six Thousand only), he has to pay Rs.9,000/- (Rupees Nine Thousand only) for loan repayment and spend Rs.10,000/- (Rupees Ten Thousand only) towards medical expenses. Hence, prayed for dismissal of the petition as he would be unable to pay the maintenance as claimed by the appellant herein.

3. The learned V Additional Family Court, Chennai found that as per Ex.R.1 (Income Tax Return) the respondent was earning a total sum of Rs.2,45,630/- (Rupees Two Lakhs Forty Five Thousand Six Hundred and Thirty only) for the year 2020-2021. The learned Judge also found that the appellant had no source of income and hence the respondent was bound to maintain her. The learned judge therefore partly allowed the application and directed the respondent to pay a sum of Rs.6,000/- (Rupees Six Thousand only) per month towards interim maintenance from the date of petition i.e. 26.02.2020.

4. Aggrieved by the quantum, the appellant has preferred the above appeal praying for enhancement of interim maintenance granted by the Court below.



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5.The learned counsel for the appellant submitted that the appellant was spending a sum of Rs.5,000/- (Rupees Five Thousand only) per month towards medical expenses besides paying Rs.10,000/- (Rupees Ten Thousand only) towards monthly rent. Therefore, the amount awarded as interim maintenance was grossly inadequate and not proportionate to the income earned by the respondent. The learned counsel further submitted that the respondent was admittedly earning a rental income of Rs.7,500/- (Rupees Seven Thousand Five Hundred only) per month and a pension of Rs.29,042/- (Rupees Twenty Nine Thousand and Forty Two only) per month. The learned counsel for the appellant produced the copy of the deposition of the respondent in O.P.No. 2096 of 2019. The respondent during the cross examination conducted by the learned counsel for the appellant admitted that he was earning a sum of Rs.7,500/- (Rupees Seven Thousand Five Hundred only) per month as rental income and Rs.29,042/- (Rupees Twenty Nine Thousand and Forty Two only) per month as pension.

6.Heard the learned counsel appearing for the appellant and respondent and perused the materials on record.



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7. Considering the fact that the appellant does not have any independent source of income and she is unable to maintain herself, the respondent is bound to maintain her. We are of the view that the finding of the learned Judge in that regard is in accordance with law. Further, the respondent himself has admitted that he is earning sum of Rs.36,500/- (Thirty Six Thousand Five Hundred only) per month by way of pension and rental income. In such circumstances, we are of the view that the interim maintenance awarded by the learned Judge can be enhanced to Rs.10,000/- (Rupees Ten Thousand only) per month. We may note that both the appellant and the respondent are Senior Citizens.

8.In the above circumstances, the respondent is directed to pay Rs.10,000/- (Rupees Ten Thousand only) per month to the appellant from November 2022 on the 7th day of every month till the disposal of O.P.No.2096 of 2019. The respondent shall pay the arrears of maintenance within a period of four (4) months from the date of receipt of a copy of this Judgment.

9.The learned V Additional Judge, Family Court, Chennai is directed to dispose of O.P.No.2096 of 2019 as expeditiously as possible and in any event,



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within a period of four (4) months from the date of receipt of a copy of this
Judgment.

10. With the above observations, Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

[V.M.V.,J]

[S.M.,J]

26.10.2022

Index : Yes / No
dk

To

1.The learned V Additional Family Court,
Chennai

2.The Section Officer
VR Section
High Court
Madras.



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