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C.M.A.No.2024 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.12.2022

CORAM:

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

C.M.A.No.2024 of 2022

and

C.M.P.No.15583 of 2022

S.Vignesh

... Appellant

Vs.

1.V.Aarthi

2.V.Kanishka (Minor)

daughter of Mr.S.Vignesh

Rep. By her Natural Guardian / Mother Mrs.V.Aarthi

Both are at

No.5, Alpha Crystal, I Floor,

Aandavar Nagar 3rd Street,

Kodambakkam,

Chennai – 600 024.

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 19 (1) of Family Courts Act, 1984 praying to call for the records pertaining to the fair and decretal common order dated 01.06.2022 passed in I.A.No.04 of 2021 in O.P.No.4521 of 2018 on the file of the V Additional Principal Family Court,



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Chennai and set aside the same.

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For Appellant : Mr.M.Arun.

For Respondents : Mr.N.Premkumar.

J U D G M E N T

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

The above Civil Miscellaneous Appeal has been filed by the Appellant / husband challenging the order passed by the learned V Additional Principal Judge, V Additional Family Court, Chennai dated 01.06.2022 in I.A.No.4 of 2021 in O.P.No.4521 of 2018 directing the appellant to pay maintenance to the first and second respondents herein.

2.The appellant had filed divorce petition under section 13(1)(i-a) of Hindu Marriage Act in H.M.O.P.No.4521 of 2018 before the learned V Additional Family Court, Chennai for dissolution of marriage held between the appellant and the first respondent on 22.02.2013 on the ground of cruelty.

3.Pending the said petition, the respondents herein filed I.A.Nos.4 and



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5 of 2021 in O.P.No.4521 of 2018 praying for interim maintenance at the rate of 40,000/- pm and Rs.1,00,000/- towards litigation expenses. By a common order dated 01.06.2022, the V Additional Principal Judge, Family Court, Chennai directed the appellant to pay Rs.7000/- per month to the first respondent and Rs.8000/- per month to the second respondent / minor daughter of the appellant and the first respondent in I.A.No.4 of 2021 towards interim maintenance.

4.In the petition for interim maintenance filed under Section 24 of Hindu Marriage Act, 1956, the first respondent pleaded that the marriage between the first respondent and the appellant took place on 22.02.2013 at Chennai. Out of the wedlock, a female child was born on 27.02.2014. The appellant had been indifferent towards her ever since the date of marriage, especially, after the girl child was born. She had suffered for her basic requirements. The appellant never supported her financially. He had not spent any money towards expenses incurred for the child birth and all the expenses were borne by her parents. The first respondent further stated that she had to spend substantial money towards the educational expenses of the



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minor daughter. The appellant is earning nearly Rs.60,000/- per month in a Software Company and hence, prayed for monthly maintenance of Rs.40,000/- from the appellant.

5.The appellant in the counter to the said petition, submitted that he is working on a temporary basis and his monthly earning is only Rs.53,000/-. He had taken a loan for marriage expenses and paying Rs.26,000/- towards E.M.I. for the said loan. He is also paying rent for the house and he is struggling to make both ends meet with his economic salary. On the other hand, the first respondent is earning Rs.60,000/- per month, as she is employed in M/s.Forex Company. The first respondent had left the matrimonial home without any excuse and has made false and baseless allegations and hence prayed for dismissal of the petition filed for interim maintenance.

6.Before the Family Court, the respondent examined herself as PW1 and marked Ex.P.1 to Ex.P.4. The appellant examined himself as RW1 and marked Ex.R.1 to Ex.R.6.



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WEB COPY 7. The learned Judge based on the documents and affidavit of assets and liabilities filed by either parties by a common order dated 01.06.2022 in I.A.Nos.4 and 5 of 2021 directed the appellant to pay Rs.7000/- to the first respondent and Rs.8000/- to the second respondent every month towards interim maintenance and further directed the appellant to pay Rs.10,000/- towards litigation expenses. The appellant has not challenged the direction to pay litigation expenses in I.A.No.5 of 2021 and has only challenged the direction made in I.A.No.4 of 2021.

8. The appellant had marked Ex.R.1 to Ex.R.6. They are his bank statement and documents showing his income and loan availed by him. Ex.R.3 and Ex.R.4 are the certificate issued by the Hospital and discharge summary issued by another Hospital respectively, to show the medical expenses incurred by the appellant. The first respondent had marked Ex.P.2 to show that she was on leave without pay from August 2020. She had also produced an account statement for the period from 01.01.2019 to 31.01.2019 which has been marked as Ex.P.1. The affidavit of assets and liabilities would



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show that at the time of filing the said affidavit, she was unemployed. The appellant would state that the first respondent is working in M/s.Forex Company and is earning Rs.60,000/- per month. However, the appellant was unable to produce any evidence in support of his claim that the first respondent is working.

9. The affidavit of assets and liabilities of the appellant would show that he is incurring monthly expenses and as per the said statement, his take home pay is Rs.26,000/- per month. The appellant has produced the details of liabilities and his bank statement to prove the loan taken by him. Therefore, we are inclined to accept the appellant's version that his take home pay is only Rs.26,000/-

10.In view of the fact that the appellant is earning Rs.26,000/- per month and on considering the facts and circumstances of the case, we consider that it would be in the interest of justice to direct the appellant to pay Rs.10,000/- per month as interim maintenance to the respondents herein. The appellant shall pay Rs.5,000/- to the first respondent and Rs.5,000/- to the second respondent. We also deem it appropriate to direct the V Additional



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Principal Judge, Family Court, Chennai to dispose of the divorce petition expeditiously.

11.In nut shell,

(i)The appeal is disposed of by directing the appellant to pay Rs.5,000/- to the first respondent and Rs.5,000/- to the second respondent per month as interim maintenance within the 5th day of the every English Calendar month.

(ii)The Learned V Additional Principal Judge, V Additional Principal Family Court, Chennai is directed to dispose of the H.M.O.P.No.4521 of 2018 as expeditiously as possible and in any event, within a period of four months from the date of receipt of a copy of this Judgment.

(iii)In the facts and circumstances of the case, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V.,J)

(S.M.,J.)

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Index : Yes / No

**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

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To

- 1.The V Additional Principal Family Court,
Chennai.
- 2.The Section Officer
V.R Section
Madras High Court.

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