



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.3054 OF 2019
AND

C.M.P.NO.16717 OF 2019

Sivaguru
S/o Ramadass

... Appellant/Respondent

Vs.

Saraswathi
W/o Sivaguru

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act r/w 28 of Hindu Marriage Act 1955, against the fair and decreetal order made in I.A.No.223 of 2016 in M.O.P.No.208 of 2015 on the file of the Family Court, Pondicherry dated 27.04.2019.

For Appellant : Mr.Ravindran.K.A

For Respondent : Mr.Devaraj

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

Heard, Mr.Ravindran, learned counsel for the appellant and Mr.S.Devaraj, learned counsel for the respondent.

2. Challenging the order passed by the Family Court, Puducherry, in I.A.No.233 of 2017 in M.O.P.No.208 of 2015, the present appeal has been filed by the appellant/husband.

3. The appellant is the husband and the respondent is the wife. The marriage between them was solemnized on 01.02.2013.



Alleging that the appellant has deserted her, she filed a petition in M.O.P.No. 208 of 2015 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. In the Original Petition, the respondent filed an application in I.A.No.233 of 2016 seeking interim maintenance at the rate of Rs.20,000/- per month. According to her, she is unemployed and the respondent is earning not less than Rs.50,000/- per month from the immovable properties and by doing business. The appellant/husband contested the petition alleging that she caused cruelty. It is further stated that he is only a Car driver and does not earn Rs.50,000/- as alleged by the respondent/wife. The parties have adduced oral and documentary evidence during the hearing of the application.

4. The learned Family Court Judge having come to the conclusion that the relationship of the parties is admitted, directed the appellant to pay a sum of Rs.6,000/- per month to his wife from the date of the petition, till the date of disposal of the main case.

5. The learned counsel for the appellant submitted that when the respondent has not proved the income of her husband, the impugned order passed by the Family Court is unsustainable. It is his further submission that the main Original Petition was decreed exparte on 10.01.2020.

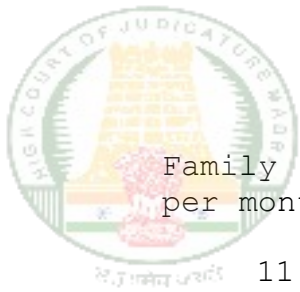
6. Per contra, the learned counsel for the respondent/wife justified the impugned order of the Family Court in his argument.

7. We have carefully considered the submissions of the respective learned counsel.

8. According to the appellant/husband, after the marriage, they lived together for three months and in that period also, the respondent/wife caused cruelty. Hence, the appellant/husband filed a petition for divorce. It is further submitted that the main Original Petition filed by the respondent/wife was disposed of on 10.01.2020 and so far, the appellant/husband has deposited Rs.1,50,000/- to the credit of the main Original Petition.

9. In the affidavit filed in support of the petition for maintenance, the respondent has not given any details about the immovable properties and the nature of business carried on by the appellant/husband. According to the appellant, he is working as a Driver and he does not possess any property.

10. Considering the facts and submissions of the learned counsel on either side, the interim maintenance fixed by the



Family Court is reduced from Rs.6,000/- per month to Rs.5,000/- per month.

11. At this juncture, it is submitted by the learned counsel appearing for the appellant/husband that the appellant has filed a petition to set aside the exparte order passed in M.O.P.No.208 of 2015 and also filed a petition to restore the divorce petition, and they, are pending before the Family Court.

12. In view of the above, the appellant is directed to deposit the arrears amount of maintenance as ordered by this Court to the credit of M.O.P.No.208 of 2015 at the rate of Rs.5,000/- per month and on such deposit, the applications filed by the appellant can be entertained and he could be given opportunity to contest the case on merits and the same can be disposed of in accordance with law by the Family Court, Pondicherry as expeditiously as possible.

13. With the above direction and modification of the order passed by the Family Court in I.A.No.233 of 2017 in M.O.P.No.208 of 2015, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge,
Family Court, Pondicherry.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+2ccs to M/s.M.Devaraj, Advocate, S.R.No.21529

+1cc to Mr. K.A.Ravindran, Advocate, S.R.No.21656

C.M.A.No.3054 of 2019
and

C.M.P.No.16717 of 2019

KV(CO)

RLP(01/06/2022)