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C.M.A.Nos.1976 & 1979 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.Nos.1976 & 1979 of 2022
and
C.M.P.Nos.15070 & 15081 of 2022**

J.Manikandan

... Appellant in both the appeals

Vs.

N.Aparna

... Respondent in both the appeals

COMMON PRAYER: This Civil Miscellaneous Appeals are filed under Section 19 of the Family Courts Act, 1984 praying to set aside the order passed in I.A.Nos.1 of 2021 & 2 of 2022 in O.P.No.1803 of 2020 dated 20.05.2022 pending on the file of the I Additional Family Court, Chennai.

For Appellant : Ms.N.Karpagam.

For Respondent : Mr.R.Krishnan.



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COMMON JUDGMENT

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

The above Civil Miscellaneous Appeals have been filed by the appellant / husband aggrieved by the common order dated 20.05.2022 passed in I.A.Nos.1 of 2021 and 2 of 2022 in O.P.No.1803 of 2020 granting interim maintenance of Rs.10,000/- per month to the minor child of the appellant and the respondent and directing the appellant to pay Rs.1,50,000/- towards educational expenses of the minor child and Rs.25,000/- towards litigation expenses.

2.The appellant filed petition in O.P.No.1803 of 2020 for divorce on the ground of cruelty.

3.Pending the said divorce petition, the respondent herein filed I.A.No.1 of 2021 praying for interim maintenance of Rs.25,000/- per month and filed I.A.No.2 of 2022 praying for a direction to the appellant to pay educational expenses of the minor child and litigation expenses.



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WEB COPY 4. The respondent had broadly stated in her petitions for interim maintenance and for educational and litigation expenses that the marriage between the appellant and the respondent took place on 15.09.2016 at Chennai and on 06.07.2017, a male child was born out of the wedlock. From the beginning, the respondent and the appellant did not have a very cordial relationship. The respondent had filed a petition for divorce and ever since their separation, the appellant had not taken care of the respondent and the minor child. The appellant was working in a company named Barclays Shared Services Pvt. Ltd. And drawing a salary of more than Rs.34,000/- per month. He has other sources of earning and hence, he is liable to pay maintenance to the respondent and the child.

5. The appellant filed a counter stating that the respondent left the matrimonial home on her own volition. She took away all the jewels and her articles, when she left the matrimonial home. She was earning more than Rs.50,000/- per month and she came from a very affluent family. Her father is earning substantially in business and has properties from which he is



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earning a monthly rent of Rs.60,000/- and hence, the appellant need not pay maintenance either to the respondent or to the child.

6.Before the Family Court, the respondent marked Ex.P.1 and Ex.P.2 and no documents were marked on behalf of the appellant. No oral evidence were let in either on the side of the appellant or on the side of the respondent.

7.In I.A.No.1 of 2021, the Family Court found that the respondent was working and hence held that she is not entitled to maintenance and held that the appellant is liable to maintain the minor child and directed him to pay Rs.10,000/- per month for the maintenance of the minor child. In I.A.No.2 of 2022, the respondent had prayed for educational expenses and marked the school bills of the minor child. The Family Court directed the appellant to pay Rs.1,50,000/- towards educational expenses and Rs.25,000/- towards litigation expenses to the respondent based on the bills produced by her.

8.The learned Counsel for the appellant submitted that the appellant is earning a sum of Rs.20,424/- per month which is his take home salary. On



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the other hand, the respondent on her own, is earning nearly Rs.50,000/- per month. That apart, the appellant is paying monthly rent of Rs.12,000/-. The learned counsel relied upon the Judgment of the Division Bench of this Court in **“P.R.Ganesh Vs. K.Latika”** in **C.M.A.No.2733 of 2016 and C.M.P.No.19734 of 2016 dated 01.06.2017** in support of his submission and held that the wife is earning and she is capable of maintaining herself, the husband need not pay maintenance *pendent lite* and prayed for setting aside the order of the Court below.

9.The learned counsel for the respondent, on the other hand, submitted that the appellant's version, that he is earning only Rs.20,424/- per month is not substantiated before the Court by filing salary certificate. In fact, in the document filed by the respondent before the trial Court which is the appellant's profile given at the time of marriage, it is stated that the appellant was working in Barclays Shared Services Pvt. Ltd., and earning Rs.34,000/- per month. The appellant is still working in the said company and his salary has only increased and not reduced. The appellant has not produced the salary certificate inspite of the direction given by this Court to him to produce



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it. The learned counsel submitted that the rental agreement produced by the appellant to show that he is paying rent, is created for the purpose of denying the payment of maintenance to the respondent. The rental agreement is dated 11.12.2021 whereas the application for maintenance was filed on 27.12.2021. The appellant and his parents are living in the house for more than five years prior to the rental agreement and the appellant had taken the house on lease. All these would show that the rental agreement has been created only for the purpose of denying maintenance. The learned counsel further submitted that the respondent produced bills to the tune of Rs.2,30,000/- for the educational expenses of the minor child and the Family Court has awarded Rs.1,50,000/- which is reasonable and the same does not call for interference.

10.We have heard the learned counsels on either side and perused the pleadings, oral and documentary evidence and materials on record.

11.It is true that when the wife is able to maintain herself, the husband need not pay any money to support her *pendent lite*. Therefore, there is no dispute with the proposition of law laid down by this Court in the Judgment



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cited by the appellant. In this appeal, we are only concerned about the maintenance payable to the minor child. Admittedly, the respondent is earning and she can maintain herself. The Family Court, therefore, rightly concluded that the respondent is not entitled to maintenance from the appellant. The only question, therefore to be determined, is whether the appellant is bound to maintain the minor child even though the respondent is earning. The evidence shows that the minor child is in the custody of the respondent and she has taken care by the respondent and paying for the educational expenses. The appellant admittedly, is working in Barclays Shared Services Pvt. Ltd. However, the quantum of salary earned by him is in dispute. The appellant claimed in his profile given at the time of marriage that he was earning Rs.34,000/- per month in the year 2016. The appellant has not disputed the fact that he is still employed in the said Bank. However, in his affidavit of assets and liabilities, he had stated that his take home salary is Rs.20,424/- per month. The appellant had not produced his salary certificate before the Family Court to substantiate his claim that he was earning only Rs.20,424/- per month. In fact, we had directed the appellant to produce the salary certificate, however, he has not produced the same even before this



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Court. Therefore, we are inclined to accept the stand of the respondent that the appellant is earning more than Rs.34,000/- per month.

12.The appellant, as a father, is bound to maintain the minor child. He has sought for divorce and is bound to support the respondent with regard to the expenses incurred, atleast for the minor child. The Family Court had directed the appellant to pay Rs.10,000/- per month for the support of minor child. We find that the quantum fixed by the Family Court is reasonable in the facts and circumstances of the case and having regard to the standard of living of the parties. Therefore, C.M.A.No.1976 is dismissed by confirming the order passed in I.A.No.1 of 2021 in O.P.No.1803 of 2020.

13.As regard, C.M.A.No.1979 of 2022 which is preferred against the order passed in I.A.No.2 of 2022, the respondent has produced the school fee receipts and some bills to show that she had incurred certain medical expenses and educational expenses for the minor child for the past two years. The bills produced by the respondent shows that the respondent has incurred nearly 2.5 lakhs for the educational expenses of the minor child. In the light



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of the documents produced by the respondent, we find that the direction of the Court below to the appellant to pay Rs.1,50,000/- towards educational expenses incurred by the respondent is justified and does not call for interference. Therefore, C.M.A.No.1979 of 2022 is also dismissed.

14.It is just and necessary that the appellant is directed to pay the arrears of maintenance and the educational expenses along with litigation expenses ordered by the Family Court within a period of four weeks from the date of receipt of a copy of this Judgment and continue to pay the maintenance of Rs.10,000/- per month till the disposal of the O.P.No.1803 of 2020 and the Family Court is directed to dispose of O.P.No.1803 of 2020 expeditiously.

15.In nut shell,

(i)C.M.A.Nos.1976 and 1979 of 2022 are dismissed and the order passed in I.A.No.1 of 2021 and 2 of 2022 are confirmed.

(ii)The appellant is directed to pay the arrears of maintenance,



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educational expenses and litigation expenses awarded in I.A.No.01 of 2021 and 2 of 2022 within a period of four weeks from the date of receipt of a copy of this Judgment.

(iii)The Learned I Additional Family Court, Chennai is directed to dispose of the H.M.O.P.No.1803 of 2020 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.

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

(V.M.V.,J)

(S.M.,J.)

01.12.2022

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1.The I Additional Family Court,
Chennai.

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2.The Section Officer
V.R Section
Madras High Court.

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

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