



C.M.A.No.3171 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

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

C.M.A.No.3171 of 2021
and
C.M.P.Nos.17942 of 2021 & 14019 of 2022

Dr.Ma Yu Teh

... Appellant

Vs.

Theresa Shih You Shieh

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act to set-aside the fair and decretal order passed in I.A.No.1 of 2019 in O.P.No.3262 of 2019 dated 07.09.2021 on the file of the learned II Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr.S.Parthasarathy
For Mr.B.Damodaran

For Respondent : Mr.Aravind Athithan



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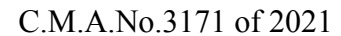
JUDGMENT

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

The appeal is directed against the fair and decreetal order passed in I.A.No.1 of 2019 in O.P.No.3269 of 2019 by the learned II Additional Principal Judge, Family Court, Chennai, dated 07.09.2021.

2.The brief facts leading to the filing of the above appeal are as follows:

a. The appellant is the husband of the respondent herein and the marriage was solemnized on 06.02.2013 in Chennai. Both the appellant and the respondent were divorcees of their previous marriage and have children out of their previous marriage. Ever since the date of marriage there was difference of opinion and quarrel between the appellant and the respondent. In the year 2018, the respondent left the matrimonial home. It is the case of the respondent that the appellant was not interested in a peaceful matrimonial life and he was only interested in the money received by the respondent as alimony from her ex-husband which was Rs.7,00,000/-(Rupees Seven Lakhs)



b. Pending the divorce petition, the respondent filed I.A.No.1 of 2019 praying for the monthly maintenance of Rs.30,000/- and for past dues of Rs.4,50,000/- for the period of 15 months during which the appellant had abandoned the respondent. It is her case that the appellant had forced her to sell the land in Coimbatore and mis-used the sale proceeds. She further claimed that the appellant had siphoned off her funds to the tune of Rs.24,88,426/-. The appellant is well to do and owns a property. He is practising as a Dentist and he has his own clinic at Evening Bazaar Road, Chennai. He is earning an income of Rs.2,00,000/- per month and also a rental income of Rs.70,000/- per month. However, in his Income Tax returns, he is showing a lesser amount and most of the transaction dealt with by him are in cash. She is suffering from spinal injury and Hepatitis B infection and



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this was transmitted to her by the appellant, she is unemployed and hence prayed for maintenance.

c. The appellant filed a counter denying all the allegations and averments made in the application for maintenance. He denied that he is earning a monthly income of Rs.2,00,000/- and receiving rental amount of Rs.70,000/- per month. He pleaded in the counter, that he is only earning Rs.25,000/- per month and with that income he had to maintain his aged father and two sons through first wife and for the medicines for his own ailment. The appellant further pleaded that the respondent is well to do. He would further state in his counter that it was the appellant who was diagnosed Hepatitis B first he was infected by her. He has also denied the allegations of siphoning off funds made by the respondent. He would further state that the respondent has stayed in the property and she has not let the appellant to enter the property.

d. The learned II Additional Family Court, Chennai, after considering the pleadings and the documents submitted by the parties found that the



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earning of the appellant was Rs.5,46,930/- for the year 2018-2019 and Rs.4,55,710/- for the year 2019-2020. These amounts were reflected in the Income Tax Returns, Ex.R.7. The learned Judge therefore, found that since the respondent had no source of income to maintain herself and the appellant is practicing as a Dentist, he had sufficient means to maintain the respondent and it was his duty to maintain the respondent and fixed the maintenance amount as Rs.10,000/- per month.

3. Heard, Mr.S.Parthasarathy, learned counsel for the appellant and Mr.Aravind Athithan, learned counsel for the respondent.

4. The learned counsel for the appellant submitted that the respondent had already obtained more than Rs.1 Crore from her ex-husband as alimony and she is well to do and she had property of her own and this petition filed for interim maintenance is only to harass the appellant and it is not a genuine application for maintenance. She had independent sources of income and receiving help from her sister in U.S. Since she has already received substantial money from her ex-husband, she is attempting to do that to the appellant.



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5. The learned counsel for the respondent submitted that admittedly, the respondent is suffering from Hepatitis B infection and she has to spend substantial amount for her treatment. It is also an admitted fact that the respondent is unemployed and the appellant is working as a Dentist. Even as per the Income Tax Returns, the appellant showed income of Rs.5,46,930/- for the year 2018-2019 and Rs.4,55,710/- for the year 2019-2020. It is the matter of common knowledge that the appellant as a Doctor would deal with cash transactions and it is not correct to say that his income was only Rs.25,000/- per month. The learned counsel further submitted that though the respondent had not challenged the order fixing the maintenance of Rs.10,000/- she is also aggrieved by the quantum and that even Rs.10,000/- is not sufficient to maintain her.

6. We have perused the records and on consideration of the submission on either side, we find that admittedly the appellant is working as a Dentist and he is an Income Tax assessee. The respondent is unemployed and further suffers from medical ailments and has to take continuous treatment. As regards the appellant's contention that the respondent had received substantial



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money as alimony from her ex-husband, the respondent's case is that the appellant had siphoned off substantial money and had forced her to take loan for purchase of the flat. We are not going into the correctness of the allegations and counter allegations in this regard at this stage. It is for the Family Court to determine those issues, while deciding the Original Petition for divorce. We find that as per Ex.R.7, the appellant is earning on an average of Rs.5,00,000/- per annum. Even if we accept the said Returns as a true reflection of his income, the average income of the appellant is approximately Rs.40,000/- per month. We are of the view, pending the divorcé petition, the appellant is bound to maintain the respondent.

7.Considering the facts and circumstances of the case and the income of the appellant, we are of the view that the maintenance amount awarded by the learned II Additional Family court, Chennai, is reasonable and hence, the order of the learned single Judge does not call for any interference in this appeal. The appellant is directed to pay the arrears of maintenance if any within a period of three weeks from the date of receipt of a copy of this order and shall continue to pay the maintenance of Rs.10,000/- till the disposal of



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O.P.No.3262 of 2019.

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8.The learned II Additional Judge, Family Court, Chennai, is directed to dispose O.P.No.3262 of 2019 as expeditiously as possible and in any event within a period of four months from the date of receipt of a copy of this order.

9.With the above direction, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(V.M.V., J) (S.M., J)

18.10.2022

Index : Yes / No
vsn

To

8/10



The Additional Principal Judge,
Family Court,
Chennai



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V.M.VELUMANI,J.
and



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