



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

CORAM:

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

C.M.A.No.3350 of 2021
and
C.M.P.No.19109 of 2021

J.Francis Xavier ... Appellant/Respondent
Vs.

1.B.Patricia Lavarentina

2.F.Maria Jenita ... Respondents/Petitioners
(Minor rep.by her mother
1st respondent herein)

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act 1984 to set aside the order and decretal order in I.A.No.1 of 2019 in O.P.No.999 of 2018 on the file of the III Additional Family Court, Chennai dated 18.03.2020.

For Appellant : Mr.S.Arokia Maniraj

For Respondent : Mrs.T.S.Selvarani for R1

JUDGMENT

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

Heard Mr.S.Arokia Maniraj, learned counsel appearing for the appellant and Mrs.T.S.Selvarani, learned counsel appearing for the first respondent and perused the materials available on record.

2.This appeal arises out of the order passed by the III Additional Family Court, Chennai in I.A.No.1 of 2019 in O.P.No.999 of 2018 dated 18.03.2020.

3.The original petition was filed by the first respondent/wife under Section 23 of the Indian Divorce Act, 1869, seeking judicial separation. Pending the original petition, the present I.A.No.1 of 2019 was filed under Section 36 of the Indian Divorce Act directing the appellant/husband to



pay Rs.20,000/- per month to the first respondent for her and Rs.20,000/- to the minor daughter, namely, F.Maria Jenita, the second respondent herein for her maintenance.

4.The marriage between the appellant and the first respondent was performed on 10.06.1994 at Our Lady of Lourdes Shrine, Perambur, Chennai. During the wedlock, they were blessed two children, namely, F.J.Ajay and Maria Jenita. The respondents claimed interim maintenance stating that the appellant is working at Port Trust as a 'Mechanist' and his monthly salary is Rs.90,000/-. Though she was working as Teacher at Korukkupet, she needs money to meet out educational expenses on her daughter and other family expenses.

5.The appellant filed counter stating that his wife suffers with cancer and she took treatment at various hospitals and he spent entire money. It is further stated that his wife is working at Government Aided School as Teacher and earning Rs.75,000/- per month. It is further stated that he had paid school fees of his daughter from 2017 and take home salary is Rs.29,947/- per month and hence, he prayed for dismissal of the interim application.

6.The learned Judge, Family Court, taking note of the fact that the first respondent/wife was working as Teacher in a Government Aided School, rejected her claim for Rs.20,000/-, however, the learned Judge directed the appellant/husband to pay Rs.20,000/- per month as maintenance to his daughter. Challenging the same, the present appeal is filed.

7.It is urged by the learned counsel appearing for the appellant that though the gross salary of the appellant is Rs.1,11,000/-, he received Rs.29,947/- per month, as major portion of the salary goes to the repayment of E.M.I and for the loan received for treatment of the respondent when she was suffering as a Cancer Patient. It is further contended that the appellant has to take care of his two sisters, one of them is a widow and another one is handicapped.

8.Per contra, the learned counsel appearing for the first respondent would state that the first respondent took treatment for cancer in the year 2006 and the entire medical expenses was paid by the employer of the appellant, namely, Port Trust. In support of her arguments, the learned counsel has produced a letter received from the Apollo Hospital. She further added that the mother of the appellant had passed away long back and one sister is working in an Export Company and her sons are also employed, whereas the first respondent forced to give Voluntary Retirement Service since her health condition is not permitting to work as Teacher. The appellant's daughter/second respondent



is now studying B.B.A., (II Year) and the first respondent is receiving Rs.25,000/- per month as pension. Out of which, she has to pay Rs.20,000/- towards rent and the balance amount of Rs.5,000/- is not sufficient to bare the expenses of her daughter.

9. We have gone through carefully the submissions of the learned counsels appearing on either side.

10. In the instant case, the relationship of the parties is not disputed. The appellant himself has admitted during the arguments that the respondent has already resigned from service on Voluntary Retirement Service. The letter dated 31.01.2022 issued by the Port Trust shows that the appellant is getting salary of Rs.1,11,295/- per month and the same is not disputed. Considering the fact that the second respondent is pursuing her studies and the cost of living is raising day by day and the appellant was directed to pay only Rs.20,000/- per month, we find no reason to upset the order impugned in this appeal.

11. For the foregoing reasons, this Civil Miscellaneous Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

skn

To

1. The III Additional Family Court, Chennai.

Copy to:

The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1cc to Mr.S.Arokia Maniraj, Advocate, S.R.No.12673

C.M.A.No.3350 of 2021
and C.M.P.No.19109 of 2021

CA (CO)
SU (07/04/2022)