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C.M.A.No.1264 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

**C.M.A.No.1264 of 2022
and
C.M.P.No.9224 of 2022**

C.Nandagopal

... Appellant

Vs.

Hemalatha

... Respondent

Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act against the judgement and decree dated 22.04.2022 passed in I.A.No.1 of 2020 in H.M.O.P.No.1609 of 2019 by the learned Additional Principal Family Judge, Coimbatore.

For Appellant : Mr.V.S.Rajaram

For Respondent : Mr.Ma.P.Thangavel



C.M.A.No.1264 of 2022

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J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order dated 22.04.2022 in I.A.No.1/2020 in H.M.O.P.No.1609/2019 passed by the learned Additional Principal Family Judge Coimbatore, in and by which, the petition filed by the respondent/wife for interim maintenance has been partly allowed by directing the appellant to pay a sum of Rs.15,000/- per month as interim maintenance.

2. Heard Mr.V.S.Rajaram, learned counsel for the appellant and Mr.Ma.P.Thangavel, learned counsel for the respondent.

3. Learned counsel for the appellant would submit that in this matter, even though, the earlier petition for restitution for conjugal rights was disposed of in the Lok Adalat wherein, the respondent/wife had given an undertaking to change her attitude and live amicably with the appellant. In spite of the undertaking, she did not change her attitude and as a matter of fact from the matrimonial home, which is a rented house, she only chased away the appellant and therefore, he would submit that in view of the said behaviour of the respondent/wife, awarding interim maintenance was not called for.

4. Mr.Ma.P.Thangavel, learned counsel appearing on behalf of the



C.M.A.No.1264 of 2022

respondent would submit that this appeal is against the order of interim maintenance and after considering both sides assets and liabilities, the said sum has been awarded.

5. We have considered the rival submissions and perused the material records of the case.

6. The appeal is against the order of interim maintenance. Therefore, the merits or otherwise of the allegations made by the parties against each other are not the relevant factor. The only consideration is as to whether or not the respondent/ wife is unable to sustain herself and if so, how much is the minimum sum which is required to sustain herself. In that view of the matter, we find that the respondent/ wife is unable to sustain herself and finding that the husband is earning a sum of Rs. 68,000/- per month as per his affidavit of assets and liability, the trial Court has ordered to pay a sum of Rs.15,000/- per month which is in order as per the decision of the Hon'ble Supreme Court reported in **2017(14) SCC 200 (Kalyan Dey Chowdhury v. Rita Dev Chowdhury Nee Nandy)**, which is lesser than 25% of the appellant's salary.

7. Therefore, we find no merits in the Appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. The trial Court is directed to



C.M.A.No.1264 of 2022

take up the main H.M.O.P.No.1609 of 2019 for disposal and dispose of the same as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) (D.B.C, J.)

26.06.2023

Index : Yes / No

Internet : Yes

vsi

To

The Additional Principal Family Judge,
Coimbatore.



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C.M.A.No.1264 of 2022

J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.

vsi

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