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C.M.A.No.1236 of 2023

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.1236 of 2023
and
C.M.P.No.12091 of 2023**

S.Frank Stephen

... Appellant

Vs.

C.Anne Swaroopa

... Respondent

Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act against the fair and decretal order dated 27.03.2023 passed in I.A.No.2 of 2022 in I.D.O.P.No.4792 of 2021 by the III Additional Judge, Family Court, Chennai.

For Appellant : Mr.L.Dhamodharan

For Respondent : Mr.V.Ramamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order of the learned III Additional Judge, Family Court, Chennai, dated



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27.03.2023 in I.A.No.2 of 2022 in I.D.O.P.No.4792 of 2021, in and by which, the application for interim maintenance filed by the respondent/wife to maintain herself and her two children was allowed in part by directing the appellant to pay a sum of Rs.8,000/- per month as maintenance to the respondent/wife and a sum of Rs.12,000/- each for the children, in all totalling Rs.32,000/- per month.

2. Learned counsel for the appellant would submit that though the gross salary as per the statement of assets and liability is Rs.90,000/- per month, the trial Court itself had noted that after deducing for EMI and other loans, the petitioner's take home salary is only a sum of Rs.20,000/- and he has to maintain himself and his parents. In that view of the matter, ordering a sum of Rs.32,000/- as maintenance to the wife and children is on the higher side. This apart, the respondent/wife is working as a teacher and earning a sum of Rs.17,000/- per month. Therefore, he would pray that the award of interim maintenance requires interference.

3. Per contra, Mr.V.Ramamoorthy, learned counsel appearing for the respondent/wife would submit that considering the age and status of the parties and only after taking into account, a sum of Rs.17,000/- being earned by the respondent/wife as a teacher, a sum of Rs.8,000/-, which is



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required as barest minimum to sustain herself, was ordered. The two children are studying and considering their educational expenses, a sum of Rs.12,000/- per month was ordered by the trial Court.

4. We have considered the rival submissions made on either side and perused the material records of the case.

5. When the appellant has borrowed home loan and paying a sum of Rs.32,000/- as EMI and had taken personal loan and paying a sum of Rs.11,000/-, that cannot come in the way of the Court calculating the quantum of maintenance, as the gross salary is a sum of Rs.90,000/- per month. Considering the fact that the respondent/wife is living with two female children, a sum of Rs.32,000/- as ordered by the trial Court, cannot be said to be excessive. The trial Court has also taken into consideration a sum of Rs.17,000/- being earned by the respondent/wife as a teacher and that is why, only a sum of Rs.8,000/- is ordered in respect of her. Therefore, we are unable to interfere with the order passed by the trial Court.

6. Learned counsel for the appellant submits that a sum of Rs.12,000/- is being paid every month as maintenance. That position is also admitted by the learned counsel for the respondent/wife. If any



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amount is paid, that may be adjusted to the total sum payable by the appellant.

7. In that view of the matter, we find no merits in the Appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. The trial Court is directed to take up the main I.D.O.P.No.4792 of 2021 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

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To

III Additional Juge,
Family Court,
Chennai.



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