



C.M.A.(MD).No.680 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.10.2023

Delivered on: 16.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

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and

C.M.P.(MD)No.9184 of 2023

T.Manikandan .. Appellant / Respondent / Petitioner

Vs.

P.Suki .. Respondent / Petitioner / Respondent

Prayer:- Appeal filed under Section 19 of the Family Court Act, against the order in I.A.No.1 of 2022, in H.M.O.P.No.944 of 2021, dated 28.03.2023, pending on the file of the Family Court (Camp), Padmanabhapuram, Kanyakumari District, Nagercoil.

For Appellant : Ms.G.Kavitha

For Respondent : Mr.C.T.Perumal



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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The husband, who suffered a decree of interim maintenance before the Family Court, is the appellant before us.

2. The brief facts, that are necessary for deciding the present Civil Miscellaneous Appeal, are as follows:-

The appellant and the respondent are husband and wife. The husband filed H.M.O.P.No.944 of 2021, for divorce on the ground of nullity of marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955. Pending the said H.M.O.P., the respondent - wife filed an application in I.A.No.1 of 2022, seeking interim maintenance, under Section 24 of the Hindu Marriage Act, 1955.

3. The said application was resisted by the appellant on the ground that within one month of the marriage, the respondent had left the matrimonial home and without any justifiable reason or cause and the respondent also received all the Sreedhana articles and gold jewellery and a consent agreement was also executed on 10.03.2022. According to the



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appellant, the application was filed only with an intention to grab money from the appellant in the name of interim maintenance.

4. The Family Court after hearing the parties ordered a sum of Rs.10,000/- as monthly maintenance.

5. Aggrieved by the decree in I.A.No.1 of 2022, the appellant is before us, challenging the said decree, mainly on the grounds that the respondent choose to live separately on her own volition and that too after deserting the appellant. In such circumstances, the relief of interim maintenance ought not to have been granted to the respondent. One another ground raised by the appellant is that the Family Court has not followed the guidelines laid down by the Hon'ble Supreme Court reported in 2021-2-SCC-324 (*Shri.Rajesh Arjun Gavali Vs. Jyoti Rajesh Gavali*) in fixing the quantum of maintenance.

6. We have heard Ms.G.Kavitha, learned counsel appearing for the appellant and Mr.C.T.Perumal, learned counsel appearing for the respondent.



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7. The learned counsel for the petitioner would submit that when the wife was living away from the husband on her own volition, the order of interim maintenance should not have been passed. Further, according to the learned counsel for the appellant, the appellant was not a Civil Engineer as projected by the respondent and he was only holding a Diploma and not earning Rs.60,000/- per month as claimed by the respondent. Moreover, the husband was without employment.

8. Per contra, the learned counsel for the respondent would submit that the appellant is a Civil Engineer and even the affidavit filed in support of the Civil Miscellaneous Appeal before this Court has been attested at Kurnool and the H.M.O.P. was attested in Rajasthan. Thus, according to the learned counsel for the respondent, it is clear that the appellant is very much employed and the case projected in the appeal grounds as if he is unemployed cannot be factually true. The learned counsel for the respondent would submit that the award of interim maintenance granted by the Family Court is just and proper and no interference is warranted.



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9. We have considered the rival submissions advanced by the respective counsel. We have also independently perused the materials available on record, including the order impugned in the present Civil Miscellaneous Appeal.

10. Both the appellant as well as the respondent have not chosen to file their respective affidavits of Assets and Liabilities. The Family court has proceeded on the basis that the parties had executed a consent agreement, on 10.03.2022 in and whereby the Sreedhana articles and gold jewellery had been returned to the respondent and merely based on surmises and conjunctions the Family Court has chosen to quantify the interim maintenance at Rs.10,000/- per month. Unfortunately, the Family Court has not chosen to discuss the allegations and counter allegations traded by the parties in the Interlocutory Application, seeking interim maintenance.



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11. It is seen from the marriage invitation that the appellant has chosen to disclose his qualification only as Diploma in Civil Engineering and not as if he is a Civil Engineering Graduate. The further contention of the learned counsel for the appellant is that when the appellant has chosen to challenge the validity of the marriage under Section 12 of the Act and sought for a decree of nullity, the question of maintenance would never arise. Insofar as the said contention is concerned, even though the appellant may have invoked Section 12 of the Hindu Marriage Act and sought for a decree on the ground of nullity, till such time, the appellant establishes his allegations set out in the H.M.O.P. and ultimately succeeds in getting a decree from the Family Court, the marriage between the appellant and the respondent subsists and the appellant cannot shirk his responsibility to pay maintenance to his wife - respondent.

12. At the same time, the Family Court has not waived the pros and cons of the claims of the respondent that the appellant is qualified Engineer and earning Rs.60,000/- per month and on the contrary, the claim of the appellant that he was only a Diploma holder and further fact that



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pending the H.M.O.P., at the time of Mediation, a consent agreement was executed on 10.03.2022, whereby, Sreedhana articles including gold jewellery were also returned to the respondent. It is also stated by the counsel for the appellant that the respondent has also expressed her willingness to dissolve the marriage also. Though the same cannot be a ground to deny interim maintenance to the respondent wife, considering the fact that the appellant is not a qualified Civil Engineer, earning Rs. 60,000/- per month as projected by the respondent and considering the various other material factors like the consent agreement entered into between the parties, the H.M.O.P. having been filed on the ground of nullity and more importantly, no evidence being let in by the respondent to *prima facie* make out a necessity of maintenance, we deem it fit to modify the award of maintenance from Rs.10,000/- to Rs.8,000/- per month.

13. In fine, the instant Civil Miscellaneous Appeal stands partly allowed and the *pendente lite* maintenance of Rs.10,000/- awarded by the Family Court is set aside and modified to Rs.8,000/- per month. The appellant shall pay the arrears of maintenance calculated at the rate of Rs.8,000/- per month within a period of 12 weeks from the date of receipt



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of a copy of this judgment and shall continue to pay Rs.8,000/- per month, on or before the 10th of every succeeding month, till the disposal of the H.M.O.P.No.944 of 2021. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(T.K.R.J.) & (P.B.B.J)
16.10.2023

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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

To

- 1.The Family Court,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

judgment in
C.M.A.(MD).No.680 of 2023

16.10.2023