



C.M.A.(MD).No.1022 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 09.10.2023

Delivered on: 12.10.2023

CORAM:

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

C.M.A.(MD).No.1022 of 2022

and

C.M.P.(MD)No.10103 of 2022

Kasirajan

.. Appellant / Respondent / Petitioner

Vs.

M.Pandiselvi

.. Respondent / Petitioner / Respondent

Prayer:- Appeal filed under Section 19(1) of the Family Courts Act, to set aside the fair and decretal order, passed by the Family Court, Madurai, in I.A.No.66 of 2022 in H.M.O.P.No.1303 of 2019, dated 05.09.2022, by allowing the Civil Miscellaneous Appeal.

For Appellant : Ms.Lakshmi Gopinathan
for Porex Legal Solutions

For Respondent : Mr.K.R.Manimaran



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JUDGMENT

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

The husband, aggrieved by the award of interim maintenance of Rs.10,000/- (Rs.5,000/- to his wife and daughter each), has preferred the present appeal.

2. The marriage between the petitioner and the respondent is not in dispute and equally, the birth of a child, who is a minor daughter aged about 5 years is also an admitted position.

3. The appellant - husband filed H.M.O.P.No.1303 of 2019, before the Family Court, Madurai, seeking dissolution of marriage with the respondent, on the ground of cruelty. Pending the said H.M.O.P., the respondent - wife filed an application in I.A.No.66 of 2022, under Section 24 of the Hindu Marriage Act, 1955, seeking interim maintenance of Rs.10,000/- each to be awarded to her and the minor daughter.

4. The said application was resisted by the appellant on the ground that though he is without any job and moreover, his wife was



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gainfully employed and there was no requirement to pay any maintenance to her.

5. The Family Court, after considering the respective contentions of the husband and wife, namely, the appellant and the respondent, awarded an interim maintenance of Rs.10,000/- (Rs.5,000/- per month payable to the wife and Rs.5,000/- to the minor daughter).

6. Challenging the said award of interim maintenance, the husband has preferred the present Civil Miscellaneous Appeal on the grounds that the Family Court has not taken into account the unemployed status of the appellant and further that the same was only because of the false criminal case foisted him by the respondent.

7. We have heard Ms.Lakshmi Gopinathan, for M/s. Porex Legal Solutions, learned counsel for the appellant and Mr.K.R.Manimaran, learned counsel for the respondent and we have also perused the records.

8. The only point for consideration in the present Civil



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Miscellaneous Appeal is as to whether the award of interim maintenance of Rs.10,000/- per month (Rs.5,000/- to the respondent/wife and Rs.5,000/- to minor daughter respectively), is fair and proper or whether it is on the higher side?

9. The appellant does not dispute the marriage or the birth of a minor daughter and the fact that presently, the minor daughter is aged about 5 years. It is also an admitted fact that the appellant is an M.E. (Mechanical) Graduate and further, he has also completed Ph.d. It is the further contention of the appellant that because the respondent, his wife gave a false complaint and filed C.C.No.179 of 2022 under Section 498 (A) I.P.C., the appellant has not been able to get any job and therefore, he is without any income whatsoever. Under such circumstances, it is contended by the learned counsel for the appellant that the husband is not in a position to pay any maintenance. However, the learned counsel for the appellant would state that the husband is willing to pay Rs.3,000/- per month towards maintenance for the minor daughter alone.

10. Per contra, the learned counsel for the respondent / wife



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would contend that though the appellant has stated that the respondent is employed, it is not so and the appellant has not been able to prove such claim that the respondent is gainfully employed. According to the learned counsel for the respondent / wife, the claim of interim maintenance was actually Rs.10,000/- each to the respondent / wife and the minor daughter respectively and the Family Court has ordered only Rs.5,000/- each to be paid, which according to the learned counsel for the respondent, is itself on the lower side and therefore, the order and decree under challenge does not require any modification or interference whatsoever.

11. We have perused the records. The appellant is well qualified and even according to his own version he is an M.E. (Mechanical Engineering) graduate and he has also pursued Phd., and completed the same in 2022. Merely because the appellant is not employed or that he is not getting any income, it will not be a ground to deny his wife and minor daughter, their right to claim maintenance to sustain themselves. Even though the appellant has stated that the respondent is a B.E. (Civil) Engineering Graduate and is earning well, the same was not admitted by the respondent and the appellant was not able to produce any documentary



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evidence to establish the factum of the respondent's employment and her earning sufficiently to maintain herself.

12. The Family Court has considered the rival submissions advanced by the parties before it and as against the claim of Rs.20,000/- per month towards maintenance and chosen to order only Rs.10,000/- per month (Rs.5,000/- each to the respondent /wife and minor daughter respectively). We do not deem it fit to interfere with the well considered order of the Family Court.

13. Further, we also notice that the said I.A.No.66 of 2022 has been filed in December - 2021. The appellant is bound to pay the arrears of maintenance from January - 2022 onwards, till date. The arrears of maintenance payable at Rs.10,000/- per month (Rs.5,000/- each to the respondent /wife and minor daughter respectively) along with a sum of Rs. 10,000/- awarded as litigation expenses, shall be paid in the manner following:

i) 50% of the total arrears of maintenance, along



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with litigation expenses of Rs.10,000/-, shall be paid within a period of six weeks from the date of receipt of copy of this judgment.

(ii) The balance 50% of the arrears of maintenance shall be paid within a period of six weeks thereafter.

(iii) The appellant shall continue to pay Rs.10,000/- per month (Rs.5,000/- each to the respondent / wife and minor daughter respectively) on or before 10th of every succeeding month till the disposal of the H.M.O.P.

(iv) In the event of any default committed by the appellant in making payments as directed in clause (i), (ii) and (iii), herein above, the H.M.O.P.No.1303 of 2019 filed by him shall stand dismissed without any further reference to this Court.

14. With the above directions, the instant Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.



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(T.K.R.J.) & (P.B.B.J)
12.10.2023

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Ls

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.1022 of 2022



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