



CMA.No.2109 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE V. SIVAGNANAM**

**C.M.A.No.2109 of 2022 &
CMP.No.16377 of 2022**

M. Uthaman ... Appellant

Vs.

M. Thenmozhi ... Respondent

Civil Miscellaneous Appeal filed under section 19 of Family Court Act against the fair and final order passed in I.A.No.1179 of 2013 in O.P.No.4525 of 2012 on the file of the VII Additional Family Court, Chennai, dated 22.06.2022 and to set aside the same.

For Appellant : Mr. C. Prakasam

For Respondent : Mr.M. Sivakumar
(No appearance)

JUDGMENT



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WEB COM (Order of the Court was made by **J.NISHA BANU, J.**)

This Civil Miscellaneous Appeal is filed by the Appellant/husband challenging the order passed in I.A.No.1179 of 2013 in O.P.No.4525 of 2012 in and by which, the learned trial judge partly allowed the application filed by the respondent/wife seeking interim maintenance, by directing the appellant/husband to pay a sum of Rs.20,000/- per month as interim maintenance and also arrears of maintenance.

2. Learned counsel appearing for the appellant/husband submitted that the appellant/husband has filed a petition in O.P.No.4525 of 2012 before the III Addl. Family Court, Chennai against the respondent/wife seeking divorce on the ground of cruelty. Pending divorce petition, the respondent/wife has filed an I.A.No.1179 of 2013 seeking interim maintenance of Rs.25,000/- per month pending disposal of OP. After hearing both sides, the learned trial judge partly allowed the petition on the ground that the appellant/husband is having sufficient means to pay the maintenance. By the order impugned, the learned trial judge directed the



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appellant/husband to pay a sum of Rs.20,000/- per month to the petitioner towards interim maintenance from the date of petition till the disposal of the OP.No.4525 of 2012. He was also directed to pay arrears of interim maintenance within three months from the date of such order.

3. The learned counsel for the appellant/submitted that the marriage between the appellant and respondent took place in the year 2009 and the respondent lived with him hardly for two months. Hence the appellant filed a petition for divorce in OP.No.4525 of 2012. Though the respondent/wife filed I.A.No.1179 of 2013 for interim maintenance, she did not proceed with the I.A., however in O.P.No.4525 of 2012, she filed her counter. The learned trial judge, after hearing final arguments, disposed of O.P.No.4525 of 2012, by granting divorce to the appellant/husband on the ground of cruelty on 22.06.2022 and while disposing of the O.P., on the same day itself, he partly allowed I.A.No.1179 of 2013 filed by the respondent/wife, by granting interim maintenance of Rs.20,000/- to her from the date of petition till the disposal of the OP.No.4525 of 2012.

4. He would further contend that at the time of admitting this appeal,



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this Court granted interim stay on condition that the appellant/husband shall deposit a sum of Rs.1,00,000/- to the credit of O.P.No.4525 of 2012 on the file of VII Addl. Family Court, Chennai within a period of eight weeks therefrom, failing which, interim stay granted shall stand vacated automatically. Accordingly, the appellant/husband remitted Rs.1 lakh to the credit of O.P.No.4525 of 2012 before the VII Addl. Family Court, Chennai.

5. He drew the attention of this court the observations rendered by the learned trial judge in paras 10 and 11 of the order passed in O.P.No.4525 of 2012, wherein, it was recorded the admission of the respondent/wife that there was no sexual relationship between the appellant and respondent as she was not interested in it and the respondent/wife also has failed to take any possible steps for reunion with the appellant/husband. Hence, for the foregoing reasons, the learned counsel for the appellant prays to set aside the impugned order and to give a direction for refunding the amount lying in the credit of O.P.No.4525 of 2012 before the VII Addl. Family Court, Chennai.



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6. Though the respondent has entered appearance through his counsel, there is no representation for her either in person or through counsel today when the matter is called.

7. Heard the learned counsel appearing for the appellant and perused the entire materials available on record.

8. Perusal of records would go to show that the appellant/husband filed a divorce petition in O.P.No.4525 of 2012 before the III Addl. Family Court, Chennai on the ground of cruelty and when the same was pending, the respondent/wife filed an I.A.No.1179 of 2013 seeking interim maintenance of Rs.25,000/- per month pending disposal of OP. The learned trial judge had disposed of O.P.No.4525 of 2012 and I.A.No.1179 of 2013 simultaneously on the same day on 22.06.2022 by granting divorce to the appellant/husband and had also partly allowed I.A.No.1179 of 2013 filed by the respondent/wife by granting interim maintenance of Rs.20,000/- to the respondent from the date of petition till the disposal of the OP.No.4525 of 2012 on the ground that the appellant/husband is having sufficient means



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to pay the maintenance. Further the appellant and respondent lived together only for two months alone and there is no co-habitation between the parties which is evident from the order passed by the learned trial judge in O.P.No.4525 of 2012. The relevant paragraphs 10 and 11 of the order passed in OP is extracted hereunder;

'10. In the light of the decision of our Honourable Apex and High Court, it is made clear that cruelty differs from person to person. The respondent in her counter very specifically advanced that she performed all her duty in a rightful way to the petitioner but in her cross examination, she very specifically admitted that, there was no sexual relationship existed between the respondent and petitioner, to which she also never shown any interest; further she very specifically admitted that petitioner often used to send her money from his earning at abroad, amid and emergence of some matrimonial disputes. After some compromise efforts took place between them, petitioner carried her to Kodaikanal so as to enable them to understand each other and to develop harmonial relation of them, but there also she very specifically admitted that there was no sexual relationship between them as she was not interest in it.

11. Marriage of the petitioner and respondent took place in the year 2009 and they found to have been lived in their matrimonial life only for the short span of one month and there is every possibility for her to reanalysis about her attitude towards her matrimonial life and she could change herself to be fit enough for the matrimonial life even after filing of this case by the petitioner and inspired the confident of the petitioner for better



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matrimonial life renewal, but simply exchanging allegations each other, they wasted nearly 13 years and the respondent also found to have been categorically failed to taken any possible steps for reunion with the petitioner.'

9. Thus it is clear that the appellant/husband lived with the respondent only for a short span of two months alone and as per the grievance of the appellant/husband, there was no sexual relationship between them as the respondent/wife was not interested in it. Further, the respondent/wife has also not taken any feasible action for developing the matrimonial relationship with the appellant/husband and there is no co-habitation between the parties. Taking into consideration the foregoing reasons, we are inclined to allow the Appeal. Accordingly, the Civil Miscellaneous Appeal is allowed. The order passed by the VII Addl. Family Court, Chennai in I.A.No.1179 of 2013 in O.P.No.4525 of 2012 is set aside.

10. In the result,

- The Civil Miscellaneous Appeal is allowed. No costs.
- The order passed in I.A.No.1179 of 2013 in O.P.No.4525 of 2012 on the file of the VII Additional Family Court, Chennai,



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dated 22.06.2022 is set aside

- The appellant is permitted to withdraw the amount of Rs.1 lakh lying in the credit of O.P.No.4525 of 2012 on the file of the VII Additional Family Court, Chennai on making appropriate application.
- The connected CMP.No.16377 of 2022 is closed.

[J.N.B.,J.] [V.S.G.,J.]
05.06.2024

Index: yes/no
Internet:yes/no
msr
To
The VII Addl. Family Court, Chennai.

J. NISHA BANU, J.
&
V. SIVAGNANAM, J.

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