



C.M.A.(MD).No.259 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD).No.259 of 2024
and
C.M.P.(MD).No.3217 of 2024

Subbaiah

... Appellant

Vs.

S.Meena

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, challenging the order passed in I.A.No.3 of 2023, dated 17.11.2023 in H.M.O.P.No.104 of 2023 on the file of the Family Court, Tuticorin, Tuticorin District.

For Appellant : Mr.KA.Raamakrishnan

For Respondent : Mr.P.Arun Jeyatram



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JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

The appellant/husband has filed this Civil Miscellaneous Appeal challenging the interim maintenance granted by the Family Court, Tuticorin, Tuticorin District in I.A.No.3 of 2023 in H.M.O.P.No.104 of 2023, dated 17.11.2023.

2.Brief facts of the case:

The marriage of the petitioner and respondents was solemnized on 12.05.2017 at Ramalakshmi Thirumanamandapan at Tuticorin. After the marriage, one male child namely Gnanesh Pranav was born on 02.10.2018. Some dispute arose between them and the appellant/husband filed H.M.O.P.No.104 of 2023 before the Family Court, Tuticorin, seeking divorce under Section 13(1) (i-a) of Hindu Marriage Act. During the pendency of the H.M.O.P., the respondent/wife filed an I.A.No.3 of 2023 seeking interim maintenance. In the Interlocutory Application, it was stated that the appellant/husband is working as Corporal in Indian Air Force and earned a sum of Rs.76,000/- as monthly income. The said application was contested by the



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appellant/husband by filing counter denying the relationship and the income of the appellant/husband. The learned trial Judge granted monthly maintenance of Rs.15,000/- by passing impugned order. Hence, challenging the same, the husband has been filed this Civil Miscellaneous Appeal.

3. Submission of the learned counsel for the appellant:

The learned counsel for the appellant/husband submitted that, he is receiving only a sum of Rs.24,432/- as take home salary and he has obtained housing loan and other loan and he is obliged to pay the said loan amount. Hence, he seeks for reduction of the maintenance amount.

4. Submission of the learned counsel for the Respondent:

Per contra, the learned counsel appearing for the respondent/wife would submit that the respondent had undergone multiple surgeries and incurred huge expenditure for her child's education. Hence, he seeks for confirmation of the award passed by the Family Court, Tuticorin.

5. We have heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.



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6. The parties have admitted the relationship and the pendency of the

H.M.O.P.No.104 of 2023 before the Family Court, Tuticorin. The appellant/ husband filed the said H.M.O.P. against the respondent/wife seeking divorce and as per the dictum laid down by the Hon'ble Supreme Court, the appellant/husband is duty bound to maintain the wife and children pending adjudication. According to the wife, she was not able to maintain herself and her child. Hence, the wife has rightly filed the Interlocutory application seeking maintenance before the Family Court, Tuticorin. The learned counsel for the appellant/husband submitted that the appellant is receiving only a sum of Rs. 24,432/- as take home salary and hence, he seeks for reduction of the maintenance amount. It is true that the take home salary according to the husband is Rs.24,432/-. But, wife and children have to take care of their day-to-day life. Considering the present day cost of living, status of parties and also considering the following parameters laid down by the Hon'ble Supreme Court in the case of **Rajnish v. Neha**, reported in **(2021) 2 SCC 324**, the Family Court granted maintenance Rs.15,000/-:

- 1) *Status of the parties.*
- 2) *Reasonable wants of the claimant.*
- 3) *The independent income and property of the claimant.*



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- 4) *The number of persons, the non-applicant has to maintain.*
- 5) *The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
- 6) *Non-applicant's liabilities, if any.*
- 7) *Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.*
- 8) *Payment capacity of the non-applicant.*
- 9) *Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
- 10) *The non-applicant to defray the cost of litigation.*
- 11) *The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act."*

Therefore, the learned trial Judge considered the above aspects and correctly fixed the monthly maintenance of Rs.15,000/- to the respondent/claimant, on the basis of the documentary evidence. Since in all aspects the learned trial Judge correctly decided the entitlement of the respondent to claim maintenance from the petitioner, and reasonably fixed monthly maintenance of Rs.15,000/-



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to the respondent. It is open to the parties to let in further evidence during the course of H.M.O.P. proceedings and the learned Judge can independently assess and fix the final amount as maintenance in accordance with law.

7. This Civil Miscellaneous Appeal is dismissed with direction to the Learned Family Court Judge to dispose of H.M.O.P.No. 104 of 2023 within a period of six months from the date of receipt of a copy of this judgment.

Consequently, the connected Miscellaneous Petition is closed.

No costs.

[V.B.S.,J.] [K.K.R.K.,J.]
25.03.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No

akv/sbn

To

The Judge,
Family Court,
Tuticorin, Tuticorin District.



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