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C.M.A.No.1730 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE MRS.K.GOVINDARAJAN THILAKAVADI

**C.M.A.No.1730 of 2022**

**and**

**C.M.P.No.12654 of 2022**

████████████████████

...Appellant

Vs.

████████████████████

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the Interim Maintenance Application I.A.No.123/2018 in O.P.No.2132/2017 dated 11.10.2018 by the then learned IV Additional Family Court, Chennai, directing the Appellant to pay a sum of Rs.20,000/- towards the maintenance of the respondent / husband.

For Appellant : Mr.R.Rajarajan for Mr.R.Dillikumar

For Respondent : Mr.K.Shakespeare



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## **J U D G M E N T**

**WEB COPY** (Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the order of interim maintenance at Rs.20,000/- per month awarded by the IV-Additional Principal Judge / Family Court, Chennai in favour of the husband.

2.The original petition in O.P.No.2132 of 2017 was filed by the wife seeking a declaration as to the nullity of the marriage that took place between her and the respondent herein on 24.04.2002 on the ground that the earlier marriage between the respondent and one A.Janaki was subsisting. Pending the said application, the husband filed another original petition in O.P.No.2132 of 2017 seeking divorce on the ground of cruelty. Pending the said original petition, the husband filed M.P.No.123 of 2018 seeking maintenance primarily contending that he has been thrown out of the house which he was occupying and he was unable to do the business, which he was carrying on because of his health condition. Health condition that was projected is that he had a heart ailment and he had to undergo angioplasty and have a stent implanted.



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3.This petition was resisted by the wife contending that at the time

of marriage, the husband did not have a permanent job, she had pledged jewels and had the finance business started, which ended in loss. Thereafter, by obtaining a loan from Indian Bank, a house was purchased and the wife has been doing business in real estate and has been running a family while the husband, who is a habitual drinker, would drink and indulge in quarrels.

4.It is also claimed that the husband is doing a finance business and real estate business and earning more than a lakhs of rupees and having a very luxurious life. The learned Family Judge took note of the fact that the husband has undergone angioplasty and has got a stent fixed, took pity on him and as a result of such misplaced sympathy, granted Rs.20,000/- per month as interim maintenance. Aggrieved, the wife is on appeal.

5.We have heard Mr.R.Rajaraman, learned counsel appearing for the appellant and Mr.K.Shakespeare, learned counsel appearing for the respondent.



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6.Mr.R.Rajarajan, learned counsel appearing for the appellant

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7.The learned judge magnified a small procedure as if the husband is totally incapacitated and proceeded to grant maintenance. Even though it is a civil appeal where we could not look into the material, which is not placed before the Trial court, the wife has produced the income tax assessment of the husband for the years 2017-2018, 2018-2019, 2019-2020, 2020-2021. Since the matter involves the payment of maintenance and the



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wife did not have legal assistance before the Family Court we had looked

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into the returns and we find the husband has returned an income of about Rs.8,00,000/- during the assessment year 2017-2018, Rs.4,21,840/- for the assessment year 2019-2020, Rs.6,10,214/- for the assessment year 2020-2021 and Rs.6,27,417/- for the assessment year 2021-2022.

8.In the light of the such evidence that has been placed before us, we do not think, we could sustain the order of the Family Court. This Civil Miscellaneous Appeal is therefore allowed, the order granting interim maintenance is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M.,J.) (K.G.T.,J.)  
27.02.2023

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Internet: Yes/No  
Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation : Yes/No

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**R.SUBRAMANIAN, J.**  
**and**  
**K.GOVINDARAJAN THILAKAVADI, J.**

KKN

To:-

The IV-Additional Family Court,  
Chennai.

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**and**  
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