



Crl.R.C.No.1075 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.10.2023

Delivered on: 29.05.2024

Coram:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.1075 of 2021

and

Crl.M.P.No.13863 of 2021

V.Duraisamy

: Petitioner

Vs

1.Revathy

2.R.D.Kamesh

[2nd Respondent represented by his mother 1st respondent]

: Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C seeking to set aside the order dated 15.04.2021 made in M.P.No.651 of 2019 in M.C.No.85 of 2019 pending before the learned II Additional Judge, Family Court, Chennai.

For Petitioner

..

Mr.M.Kamalakaran

For Respondents

..

M/s.Thenmozhi Shivaperumal

ORDER

This Criminal Revision Case had been filed to set aside the order dated 15.04.2021 made in M.P.No.651 of 2019 in M.C.No.85 of 2019



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pending before the learned II Additional Judge, Family Court, Chennai.

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2.The brief facts, which are necessary for disposal of this Criminal Revision Petition, are as follows:

2.1. The Revision Petitioner is the husband. He had filed this Criminal Revision Case aggrieved by the order of interim maintenance ordered by the learned II Additional Judge, Family Court, Chennai in M.P.No.651 of 2019 in M.C.No.85 of 2019, dated 15.04.2021. As per the order, the interim maintenance ordered to the first respondent/wife is Rs.10,000/- and Rs.10,000/- to the minor respondent. At the time of admission, interim stay was granted in Crl.M.P.No.13863 of 2021 in Crl.R.C.No.1075 of 2021 directing the Petitioner/Husband to deposit 25% of the arrears as on date to the credit of M.C.No.85 of 2019 on the file of the learned II Additional Principal Judge, Family Court, Chennai. Till date the Revision Petitioner had been complying with the condition and the Respondent/wife has also been withdrawing the amount. It is the submission of the learned Counsel for the Revision Petitioner that the Revision Petitioner is a divorcee. The first Respondent is also a divorcee.



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They had married. In the earlier matrimonial relationship, there was no issue for both parties. After this marriage, the first Respondent gave birth to a child. From the date of marriage the first Respondent/wife is interested only in pressurising the Revision Petitioner for her luxurious way of life demanding money, she had given SMS “Get me a house and Rs.10,00,000/- otherwise, you get lost”. That was the message sent by her to the Revision Petitioner. She is not ready to co-habit with the Revision Petitioner. The Revision Petitioner is a Group-I Service Officer, now serving at Cuddalore District. He is provided with official quarters in which the Respondent/Wife can always come and join in matrimonial life. She is adamant in not joining him. Due to the conduct of the Respondent/wife the Revision Petitioner husband had suffered depression. As per Section 125 (4) of the Criminal Procedure Code, the wife who had left the matrimonial home without any valid and acceptable reason is not entitled to claim maintenance. The learned Judge had relied on the decree of divorce and misdirected himself to draw presumption against the husband. Therefore, the finding arrived at by the learned II Additional Judge, Family Court, Chennai is perverse and the same is to be set aside.



WEB COPY 3. The learned Counsel for the Revision Petitioner invited the attention of this Court to paragraph 9 of the counter filed by the Revision Petitioner before the trial Court which reads as under:

“9. The allegations made in paragraph 22 that the Respondent and his parents never bothered about the needs of the petitioners are hereby denied and puts the 1st petitioner in strict proof of the same. The allegations that it is not safe for the petitioners to live safe in Peranamallur is hereby denied and puts the 1st petitioner in strict proof of the same. The allegations made in paragraph 23 that the respondent had committed willful acts of cruelty are hereby denied and puts the 1st petitioner in strict proof of the same. The allegations made in paragraph 24 that this respondent is earning Rs.80,000/- per month is hereby denied and puts the 1st petitioner in strict proof of the same. The allegations that the 1st petitioner is suffering for eking her livelihood is hereby denied. The respondent denies the estimation given in the paragraph 24 and puts the 1st petitioner in strict proof of the same. The allegations made in paragraphs 25 and 26 are hereby denied and puts the 1st petitioner in strict proof of the same. The allegations made in paragraph 27 and 28 are unwarranted and had been made for the occasions and the same are hereby denied and puts the 1st petitioner in strict proof of the same. The dates and figures given in the cause of action in paragraph 29 are hereby denied and puts the 1st petitioner in strict proof of the same. The allegations that this respondent has to pay Rs.50,000/- to the 1st petitioner and Rs.25,000/- to the 2nd petitioner is hereby denied and the same only goes to prove that the 1st petitioner and her father are only for the money and not interested in the good life of the petitioners.”

4. The learned Counsel for the Revision Petitioner also drew the attention of this Court to paragraph 3 of the petition of maintenance filed by



the Respondents herein which reads as under:

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“3.The Petitioner states that as already explained in the original petition in M.C.No.85/2019, the 1st Petitioner is the legally wedded wife of the Respondent and the 2nd Petitioner is the only son of the Respondent. The Respondent has completely deserted both the Petitioners from 03-08-2013 and they both are under the actual care of the Petitioner's father, who is aged about 72 years and a State Government Pensioner as a Retired Deputy Collector. Several steps taken by the Petitioner and her father for restitution of conjugal rights had been vitiated by the Respondent and his parents. It is evident from the letters sent to the Respondent's father on 29.01.2018 and on 02.03.2018 and furnished to Court along with Petition in M.C.No.85 of 2019.”

5. Further, the learned Counsel for the Revision Petitioner drew the attention of this Court to SMS message in the additional typed set filed by the Petitioner herein which reads as under:

“Hai you give me divorce paper and my things silver panchapathiram, udrani and everythings.

You buy and give a own house and monthly 1,00,000/- amount otherwise I will take severe action for whole family dowry arrest.”

6. The learned Counsel for the Revision Petitioner/Husband relied on the counter in M.P.No.651 of 2019 in M.C.No.85 of 2019 wherein the husband had clearly stated that he has no objection to the wife joining him in matrimonial life. He is always willing to take her back. Therefore, he has filed H.M.O.P.No.1894 of 2021 under Section 9 of the Hindu Marriage Act



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seeking restitution of conjugal rights. Subsequently, the petition was dismissed as not pressed. The learned Counsel for the Revision Petitioner invited the attention of this Court to the counter filed by the wife in H.M.O.P.No.1894 of 2021. From the counter it can be presumed that the wife is not willing to co-habitat with the Revision Petitioner/husband. The wife/first Respondent herein filed domestic violence case case DVC No.22 of 2019. In the cross-examination the wife as P.W-1 had stated that she is not willing to join with her husband. Therefore, the interim order granting maintenance by the learned II Additional Judge, Family Court, Chennai is not as per law.

7. The learned Counsel for the Revision Petitioner submitted that the Revision Petitioner/husband was hospitalised for few days. He was on leave for two months for treatment. The wife did not have the courtesy to see the husband in hospital. The Revision Petitioner/husband is living alone in the place where he is serving but the wife refused to join. Therefore, the wife, who is adamant and refused to join the husband, is not entitled to maintenance. Therefore, the learned II Additional Judge, Family Court,



Chennai, failed to appreciate those facts and mechanically granted interim maintenance and the same is to be set aside.

8. Ms.Thenmozhi Sivaperumal, learned Counsel for the Respondents submitted her arguments. The learned Counsel for the Respondents invited the attention of this Court to M.C.No.85 of 2019 filed by the first Respondent/Wife before the learned II Additional Judge, Family Court, Chennai. The relevant portion of the order reads as follows:

“22. The Petitioner state that, it is a clear evidence to prove that either the Respondent or his parents did not bother about the needs of the Petitioner and her son and completely neglected them and failed to provide the basic necessities to them. The words uttered by the Respondent to Mr.Santhanam made the Petitioner to think about the future life of herself and her son Mr.Kamesh, who is aged about 5 years. The Petitioner has come to the verge of mental break-down and has lost all charm and peace of mind for her future life. Thus, the words and continued destitution from the Respondent, created mental agony to the maximum extent and the Petitioner has come to a conclusion that she and her son cannot live at Peranamallur and it is also not safe for both the Petitioner and her son.

24. The Petitioner states that, the Respondent is a Class-I-Gazetted Officer of Tamil Nadu State Government and he is now employed as Deputy Registrar of Cooperative Societies at Chidambaram in Cuddalore District and is earning around Rs.80,000/- per month. But, the Petitioner is suffering for eking her livelihood with her son in these days of hard livings and she is feeling very difficulty in maintaining her family with a meager portion of her father's pension as spared by her father, who is a



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Retired State Government Officer, and aged about 72 years.

26. *The Petitioner states that the Respondent being the directly recruited Class-I Officer, promotion to his next higher cadre as Joint Registrar of Cooperative Societies is already overdue and as such the Respondent may soon be elevated to next higher cadre and his pay-scale will certainly shoot up to a considerable level and he will be provided with a Govt. Staff-Car for his use besides official quarters. Soon after elevation, the Respondent becomes a self-controlling officer and his travelling allowances and other perquisites will be raised to suit to his reasonable needs. The Respondent owns a terraced house at his native place (i.e) Penamallur Village, Vandavasi Taluk, Tiruvannamalai District in an extent of 12000 sq. ft of plinth area and the builtup area would be around 2000 sq.ft. As on date, the estimated value of the house would be roughly around Rs.70,00,000/- (Rupees Seventy Lakhs). Further, the Respondent owns a motor-cycle which may worth about Rs.60,000/- (Rupees Sixty Thousand). In addition, the Respondent's family owns an extent of nearly 3 acres of cultivable agriculture land in the village, and also a Rice and Oil Mill in the name of "ANNAI RICE MILL" located in the bazaar of Pernamallur Village, Vandavasi Taluk, Tirvannamalai District, and as such his family is financially sound and well settled. But, the Respondent is spending lavishly without sparing a single rupee for the livelihood of his legal-wife and his only legal-son. Therefore, the Petitioner has every right to claim maintenance amount from the Respondent."*

9. It is the contention of the learned Counsel for the Respondents that the object of maintenance is a social welfare legislation to ensure the safety and security of women and children. Also, she invited the attention of this Court to the amendment brought to Section 125 of Cr.P.C., whereby maintenance is to be granted during enquiry. In M.P.No.651 of 2019 in



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M.C.No.85 of 2019, the documents on behalf of the Petitioner in the Maintenance Case, the Respondents herein have marked as Ex.P-1 to Ex.P-

11. Ex.P-1 is the letter given by Deputy Registrar of Co-operative Societies, Chidambaram, Ex.P-2 is the Pay Certificate, Ex.P-3 to Ex.P-5 are the receipts for the Tuition Fees of the child namely R.D.Kamesh, Ex.P-6 is the Bills for shoes and socks, Ex.P-7 is the Bills for note book for the year 2019-2020, Ex.P-8 is the receipt for bus fees and uniform fees for the year 2019-2020, Ex.P-9 is the document regarding the name of the nominee in the General Provident Fund of the Respondent has not been changed and it is disclosed as D.Lavanya, Ex.P-10 is the copy of the decree made in O.P.No.50 of 2020, Ex.P-11 is the Salary Slip of the Petitioner herein for the month of January, 2021. The learned Counsel for the Respondents invited the attention of this Court to the decree of divorce granted to the Revision Petitioner herein from his earlier marriage. It is to be noted that he is the Petitioner in the Petition for divorce. The husband only sought divorce from his earlier marriage. The learned Counsel for the Respondents invited the attention of this Court to the pay slip of the Revision Petitioner for the Month of January 2021 and the salary of the Petitioner is Rs.86,687/-. The



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learned Counsel for the Respondents invited the attention of this Court to the counter filed by the Revision Petitioner herein as Respondent in M.C.No.85 of 2019. The learned Counsel for the Respondents invited the attention of this Court to the order passed by the learned V Additional Principal Judge, Family Court in M.P.No.651 of 2019 in M.C.No.85 of 2019. The first Respondent has no independent income. He invited the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Rajnish -vs- Neha [AIR 2021 SUPREME COURT 569]*** wherein the parties to the Maintenance Case as well as Domestic Violence Case seeking maintenance have to file statement of assets and liabilities along with the affidavit. Here, in this case, the statement of assets and liabilities of the Petitioner was given. The Revision Petitioner herein has a bank deposit of Rs.30,00,000/-, he owns an RCC building measuring 1525 Sq.ft from which he receives monthly rent of Rs.9,500/- which was disclosed by the husband. The Revision Petitioner has stated that he does not know the details of the assets and liabilities of the first Respondent/Wife. It is found to be unacceptable. The learned Counsel for the Respondents also invited the attention of this Court to the deposition of R.W-1. The relevant portion



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reads as follows:

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“4. இரண்டாவதாக மனுதாரரை நான் திருமணம் செய்யும்போது 2 சவரன் செயின், ஒரு சவரன் மோதிரம் மற்றும் 100 கிராம் பூஜை பொருட்கள் மனுதாரர் வீட்டிலிருந்து சீராக பெற்றேன். நான் வரதட்சணை எதுவும் வாங்கவில்லை. வாங்குவதும் கொடுப்பதும் தவறு. ரூ.55,000 மனுதாரரின் தகப்பனார் திருமண செலவிற்காக என்னிடம் கொடுத்தார். என்னுடைய திருமணத்தின்போது என்சார்பில் சுமார் 50 பேர் திருமணத்திற்கு வந்தனர்.

10. 21.07.2013 அன்று வளைகாப்பு நடந்தது என்றால் தேதி எனக்கு நினைவில்லை. வளைகாப்பு செலவை எனது மனைவியின் பெற்றோர் செய்தனர் என்றால் சரிதான். வளைகாப்பின்போது எனது மனைவியின் பெற்றோர் எனது மனைவிக்கு உயர் இரத்த அழுத்தம் இருப்பதாக கூறி மருத்துவ ஆவணங்களை என்னிடம் காட்டினர் என்றால் இல்லை. வளைகாப்பு முடிந்து எனது மனைவி அவருடைய பெற்றோர் வீட்டிற்கு சென்ற பிறகு அவருக்கு குழந்தை பிறக்கும்வரை நான் சென்று பார்த்தேனா என்றால் புழுதிவாக்கத்தில் இருந்தபோது இரண்டுமுறை பார்க்க சென்றேன். அவர் பார்க்க மறுத்துவிட்டார். நான் வழக்கிற்காக பொய் சொல்கிறேன் என்றால் இல்லை.

11. 03.08.2013 அன்று காலை 7 மணியளவில் மனுதாரரின் தகப்பனார் குழந்தை பிறந்ததை எனக்கு போன் மூலம் தெரிவித்தார். நான் குழந்தையை பார்க்க சென்றிருந்தேன். மருத்துவமனையில் குழந்தையை பார்த்தேன். அப்போது மருத்துவமனையில் நான் மருத்துவ செலவிற்கு பணம் கொடுத்தேனா என்றால் இல்லை. குழந்தைக்கு பெயர் சூட்டும் விழாவை மனுதாரரின் பெற்றோர் மண்டபத்தில் வைத்திருந்தனர். அவர்கள்தான் அதற்கான செலவை செய்தனர். நான் விழாவிற்கு சென்றிருந்தேன். அந்த செலவிற்கு நான் பணம் எதுவும் கொடுக்கவில்லை. அதன்பிறகு மனுதாரரை என் வீட்டிற்கு அழைத்து வந்துவிட முயன்றபோது நான் மறுத்தவிட்டேன் என்றால் இல்லை.

14. மனுதாரரின் தந்தை அதன்பிறகும் பலமுறை பேச்சுவார்த்தைக்கு அவருடைய உறவினர் வீட்டிற்கு அழைத்தார் என்றால் இல்லை. பெரமணநல்லூரில் உள்ள வீடு எங்களுக்கு சொந்த வீடு. அந்த வீட்டை எனது தந்தை என் பெயரில் எழுதிக்கொடுத்துள்ளார். எனது தந்தைக்கு ஒரு அரிசி ஆலை உள்ளது என்றால் அது இப்போது இல்லை, விற்கப்பட்டுவிட்டது. நிலங்கள் எதுவும் இல்லை. எனது வீட்டில் வாடகைக்கு ஏதாவது பகுதி உள்ளதா என்றால் முதலில் வாடகைக்கு விட்டிருந்தேன் தற்போது இல்லை. 2016 ம் வருடம் அந்த வீட்டை விரிவுபடுத்தினேன். எனது கடன் சொத்து வாக்குமூலத்தில் எனது தந்தை கொடுத்த வீட்டை குறிப்பிட்டு கூறியுள்ளேனா என்றால் அந்த விவரம் கேட்கப்பட்டிருந்தால் கூறியிருப்பேன், எனக்கு நினைவில்லை.”



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10. In spite of evidence favouring the wife, the learned Judge dismissed the DVOP and the Petition for restitution of conjugal rights filed by the husband was also dismissed. Subsequently, it was not pressed. The Petition for divorce also filed by the husband was dismissed for default. Based on Ex.R-1 to Ex.R-13, the learned Additional Judge, Family Court, Chennai had granted interim maintenance. By way of rejoinder, the learned Counsel for the Revision Petitioner submitted that the DVOP filed by the wife was dismissed on the ground that the wife had clearly stated in her evidence that she does not want to live with her husband.

11. The learned Counsel for the Respondents herein sought for dismissal of this Petition as having no merits as the learned Additional Judge, Family Court, Chennai had only granted interim relief. The contentions raised by the Revision Petitioner cannot be considered in this Revision Petition. This subject matter is to be dealt with after appreciation of evidence in the Maintenance Case. The interim injunction had to be granted before disposing of the Maintenance Case. Therefore, the Revision has no merits and is to be dismissed.



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Point for consideration

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Whether the order passed by the learned II Additional Judge Family Court, Chennai in M.P.No,651 of 2019 in M.C.No.85 of 2019 dated 15.04.2021 is to be set aside.

12. Perused the order passed by the learned II Additional District Judge. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent.

13. On consideration of the rival submissions and on perusal of the order passed by the learned II Additional Judge, Family Court Chennai, the order passed by the learned II Additional Judge Family Court cannot be treated as perverse. It is only an interim order. The reasons stated by the Revision Petitioner stating that the wife had not joined in the matrimonial home she had left the matrimonial home voluntarily on her own volition. Therefore she is not entitled to claim maintenance. The wife who had deserted the husband and refused to join the matrimonial home is not entitled to maintenance cannot be considered at this stage.



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10. The parties are referred as in the trial Court for the sake of brevity.

11. As per the submission of the learned Counsel for the Revision Petitioner (husband) the Respondent in this Revision Petition (wife) who is the Petitioner in the Maintenance Case had filed Maintenance Case only for maintenance. The first Respondent (wife) who is the first Petitioner in M.C.No.85 of 2019 refused to live as wife to the Respondent in the Maintenance Case (the Revision Petitioner herein) without any valid reasons. The Revision Petitioner (husband) claims that he had divorced his earlier wife and contracted this marriage. Similarly the first Respondent (wife) in this Revision Petition also a divorcee who had obtained divorce from her earlier marriage. Both the husband and wife did not have children from their earlier marriage. After six months, they were blessed with a child. Now, the wife and child had not joined matrimonial home, resulting in the husband suffering depression. Husband had filed H.M.O.P seeking restitution of conjugal rights which was subsequently dismissed as Withdrawn. In the light of the facts available before the learned III Additional Judge family Court in this maintenance case, it is to be



considered that in the H.M.O.P filed for restitution of conjugal rights also, the wife as a Respondent would have filed petition seeking interim maintenance. It is settled proposition of law that when the wife filed petition or face litigation in the matrimonial dispute she is entitled to interim maintenance and litigation expenses for the case instituted by the husband. Under those circumstances, it is presumed that the husband as Petitioner in H.M.O.P seeking restitution of conjugal rights he was aware of the risk involved wherein he has to pay interim maintenance and also litigation expenses for the wife who is the Respondent in the H.M.O.P. Therefore he might have not pressed the Petition seeking restitution of conjugal rights. Also it is to be noted that the Revision Petitioner claims that he is a Group-1 Officer of the Tamil Nadu Public Service Commission. He is provided with official quarters in the place of his service, but the wife and their minor son refused to come and join him in his place of posting.

12. In the counter filed by the husband in the maintenance case, he had denied the averments in the maintenance case by the wife that the husband used to inflict mental and physical torture on the wife. Therefore



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she was scared of joining him in the matrimonial home. The claim of the Revision Petitioner, husband to dismiss the petition for interim maintenance and set aside the order passed by the learned II Additional Judge, Family Court, Chennai in M.P.No.651 of 2019 in M.C.No.85 of 2019 cannot be accepted in the principles of fairness and equity which governs the Civil Court in granting the relief.

13. The contention of the learned Counsel for the Revision Petitioner seeking to set aside the order passed by the learned II Additional Judge, Family Court in M.P.No.651 of 2019 in M.C.No.85 of 2019 can be considered only after appreciation of evidence and not at this stage. When the maintenance case is pending, interim maintenance was sought by the wife. The same was granted by the learned II Additional Judge, Family Court. It is to be noted that in cases of maintenance, the restitution of conjugal rights and for divorce interim order were passed based on the status of the wife. If the wife is unemployed and has no salary then she is entitled to claim the maintenance. Before ever recording the evidence in the Maintenance Case, the case is based on presumptions, therefore, M.P was



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allowed for interim maintenance. It cannot be treated as perverse.

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14. The claim of the husband as Revision Petitioner seeking to set aside the order can be considered only after adducing evidence during enquiry in Maintenance Case on appreciation of evidence in the Maintenance Case. Till such time, the Petitioners in Maintenance Case will be allowed interim maintenance leniently. The contention of the Revision Petitioner (husband) to refuse interim maintenance can be considered only on appreciation of evidence, and not at the preliminary stage. In the light of the decisions of the Hon'ble Supreme Court regarding payment of interim maintenance, the order passed by the learned II Additional Judge, Family Court cannot be treated as perverse. Therefore, the submission of the learned Counsel for the Revision Petitioner is rejected.

15. Point for consideration is answered against the Revision Petitioner and in favour of the Respondents. The order passed by the learned II Additional Judge, Family Court, Chennai in M.P.No,651 of 2019 in M.C.No.85 of 2019 dated 15.04.2021 is confirmed.

In the result, this Criminal Revision Petition is dismissed as



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having no merits. Consequently, connected miscellaneous petition is closed.

The learned II Additional Judge, Family Court is directed to proceed with enquiry in the maintenance case and dispose of the same as early as possible within a reasonable time of three months from the date of passing of this order. The learned II Additional Judge, Family Court shall not be influenced by observations or discussions in the order passed by this Court. The learned II Additional Judge, Family Court shall pass appropriate orders on merits after recording evidence from both parties in the enquiry in maintenance case.

29.05.2024

srm/shl

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To:

The II Additional Judge,
Family Court,
Chennai.

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