

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.M.A. No.1178 of 2015
and
M.P.No.1 of 2015

Loganathan .. Appellant/Respondent/Petitioner

vs

1.Sumathi
2.Minor L.Sakthivel .. Respondents/Petitioner/Respondent/
Third Party

(minor R2 rep. By his next friend
and mother R1)

Appeal against the order dated 04.07.2014 in I.A.No.3 of 2014 in
H.M.O.P.No.14 of 2014 passed by the Family Court, Erode.

For Appellant ... Mr.R.Nalliyappan

For Respondents .. Mr.Kaithamalai Kumaran

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

This appeal is filed by the husband, challenging the order passed by the Family court, Erode, directing him to pay the arrears of interim maintenance, as a condition for proceeding further with the trial of the matrimonial case.

2.Heard Mr.R.Nalliyappan, learned counsel appearing for the appellant. Mr.Kaithamalai Kumaran, learned counsel takes notice for the respondents.

3.The appellant herein filed H.M.O.P. No.104 of 2010 on the file of the Principal Sub Court, Erode for the dissolution of the marriage that took place between him and the first respondent. During the pendency of the said original petition, a Family Court was constituted and hence the case was transferred to the Family Court.

4. In the Family Court, the respondents took out an application in I.A.No.837 of 2010 for payment of interim maintenance. By an order dated 05.04.2011, the Family Court fixed the interim maintenance payable to the respondents as Rs.4,000/-, apart from the litigation cost of Rs.6,000/-.

5. Though the appellant paid the litigation cost as well as the interim maintenance from 05.04.2011 to 05.08.2013, he stopped paying the interim maintenance thereafter. Therefore, the respondents filed an application in I.A. No.3 of 2014 for a direction to the appellant to pay the arrears before proceeding further with the trial of the original petition. This interlocutory application was allowed by the Family Court by an order dated 04.07.2014 forcing the appellant to come up with the above appeal.

6. We find that there are absolutely no merits in the appeal. The original order dated 05.04.2011 passed in I.A.No.837 of 2010 fixing the interim maintenance at Rs.4,000/- per month has attained finality. The appellant did not question the said order. He also complied with the said order for a period of two years. In such circumstances, he cannot now take exception to the order which is merely in the form of enforcement of the earlier order.

7. The Family Court has taken note of the fact that upto 05.08.2013, the total amount payable worked out to Rs.1,12,000/- and that out of the said amount, a sum of Rs.52,000/- had already been paid. Therefore, the Family Court directed the balance amount of Rs.60,000/- to be paid.

8. The appellant has no option except to comply with the above order. But his grievance is that the respondents are dragging on the proceedings. It appears that the affidavit in lieu of examination in chief was filed on 17.06.2011. A period of nearly four years have gone. Therefore, we are of the view that fixing a time schedule both for payment and for proceeding with the trial, would meet the ends of justice.

9. Therefore, this Civil Miscellaneous Appeal is disposed of with the following directions:

(i) The appellant shall pay the amount of Rs.60,000/- (Rupees Sixty Thousand only), which is found to be the arrears as on 05.08.2013, within a period of two weeks from the date of receipt of a copy of this order. Upon such payment, the Family Court shall take up the case for cross-examination of P.W.1. Tentatively, we fix the date for cross-examination of P.W.1 as 06.07.2015. On the said date, the first respondent or her counsel shall positively cross-examine the appellant.

(ii)After the evidence on the side of the appellant is over, the appellant shall pay the remaining amount upto date in two instalments. Upon payment of the first instalment, the first respondent shall lead evidence on her side.

(iii)At the time of argument, the second instalment shall be paid so that both parties can see to it that the main litigation is not dragged on at the stage of interlocutory application.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

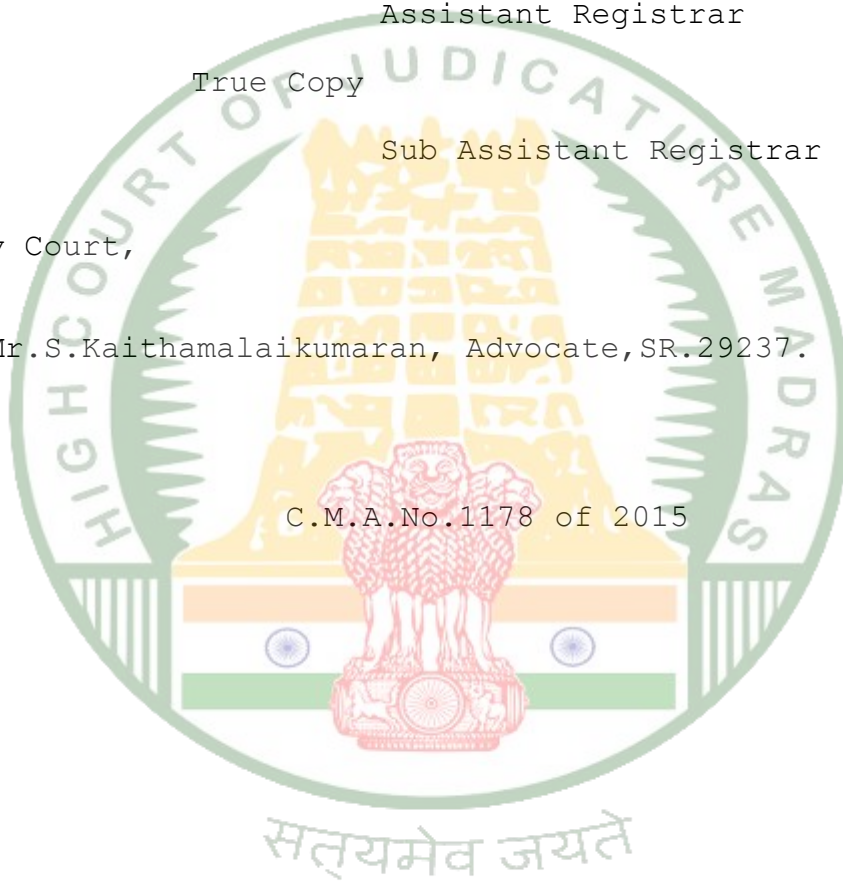
To

The Family Court,
Erode.

+1 cc to Mr.S.Kaithamalaikumaran, Advocate,SR.29237.

Ad(co)
krd 8/7

C.M.A.No.1178 of 2015



WEB COPY