

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CIVIL MISCELLANEOUS APPEAL NO.439 OF 2015 AND M.P.NO.1 OF 2015

Murugappan Ramu Murugappan ...Appellant/Respondent

Vs

Visalakshi Thiagarajan ...Respondent/Petitioner

APPEAL under Section 19 of the Family Courts Act against the order dated 9.1.2015 made in I.A.No.1930 of 2013 in O.P.No.3312 of 2006 on the file of the Principal Family Court, Chennai.

For Appellant : Mr.J.Saravana Vel for
Mr.P.B.Suresh Babu

For Respondent : No appearance

JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN, J

The appellant/husband has come up with the above appeal, questioning the correctness of an order passed by the Family Court under Section 24 of the Hindu Marriage Act, 1955, directing the husband to pay Rs.40,000/- per month to the respondent - wife and Rs.50,000/- per month to their minor daughter from the date of the petition namely 22.7.2013.

2. Heard Mr.J.Saravana Vel, learned counsel for the appellant.

3. The case has a chequered history. The appellant married the respondent on 9.9.1994. The marriage was solemnized according to Hindu customary rights and

practices at Sivaganga District in Tamil Nadu. The marriage was duly registered in the office of the District Registrar on 5.6.1995. A daughter, who was named as Deepika, was born in the wedlock on 4.9.1996.

4. According to the appellant, the respondent abandoned the matrimonial home in January 1998, forcing him to file a petition in F.C.O.P. No.70 of 2000 on the file of the Family Court, Chennai for dissolution of marriage. It appears that on the same day, the respondent also filed a petition in F.C.O.P.No.72 of 2000 for restitution before the same Court. Thus, both parties submitted themselves to the jurisdiction of the Family Court at Chennai.

5. However, the elders intervened and brought about a reunion, after which, the respondent is stated to have gone to United States of America and then to Canada. The appellant also went to Canada and started a business. According to the appellant, several things happened in Canada, which resulted in a legal notice being sent by the respondent on 13.9.2006 from the solicitors of the respondent informing him that she had moved the Canadian Court for divorce, maintenance and custody of the child. But, the appellant came back to India and questioned the jurisdiction of the Canadian Court.

6. The appellant again filed a petition in O.P.No.3312 of 2006 on the file of the Family Court, Chennai seeking dissolution of marriage, custody of the minor child and other reliefs. In the petition so filed in the year 2006, the respondent had entered appearance on 18.10.2010. Even while contesting the main petition, the respondent took out an application in I.A.No.1930 of 2013 seeking interim alimony for herself and her minor daughter and also seeking a direction to the appellant to bear the educational expenses for her daughter. The said application in I.A. No.1930 of 2013 was allowed by the Principal Family Court by an order dated 9.1.2015, directing the appellant to pay interim alimony in a sum of Rs.40,000/- to the wife and interim alimony of Rs.50,000/- to the daughter from the date of filing of the said application. It is against the said order of the Principal Family Court that the appellant has come up with the above civil miscellaneous appeal.

7. It appears that when the above appeal was listed on 10.3.2015, the respondent had entered appearance at that time through a counsel. The Division Bench, before which the case came up for admission, passed an order, which reads as follows :

"Mr.K.Ilango, learned counsel for the respondent - caveator takes notice. The matter in question needs to be examined on instructions from the respective parties. Upon hearing the learned counsel for the

parties, they suggested that the matter may be disposed of after two weeks. Learned counsel for the respondent also requests time to file counter. Post on 26.3.2015 for counter and disposal."

8. Thereafter, the case came up before the same Division Bench on 26.3.2015. However, the case does not appear to have come up thereafter, due to various reasons, one of which was the closure of the Court for summer recess in May 2015. Suspecting foul play, the respondent sent a letter to the Registrar - General from Canada on 13.7.2015. The said letter contained a scandalous attack on (i) the appellant (ii) the Listing Officers of the Court (iii) the Registrar - General and (iv) the Honourable Chief Justice.

9. After the complaint was looked into, the case was posted before another Bench of this Court for admission on 31.8.2015. In view of the tone and tenor of the letter written by the respondent, that Bench recused itself. Therefore, the matter was assigned as a specially ordered case.

10. The case came up for the first time before us on 11.9.2015. On that day, the original counsel by name Mr.K.Ashok Kumar, through whom the appellant filed the above appeal, withdrew his appearance. What was interesting was that even Mr.K.Elango, learned counsel, who had entered appearance for the respondent by filing a caveat, also withdrew his appearance. The learned counsel, who appeared for the respondent produced a letter sent by the respondent questioning his propriety in appearing. The e-mail was filed along with a memo by Mr.K.Elango, learned counsel, who earlier appeared for the respondent. It will be useful to extract the said e-mail, which is as follows :

"Hello Mr.Chamki Raj,

Do not represent me, Visalakshi Thiagarajan any further in any court, including Chennai Family Court, the Madras High Court and any other such courts, from today, 30 August 2015 onwards. You have no authority to make any agreements or legal commits on my behalf and can no longer represent me in any other legal forum.

Do not represent my daughter, Deepika Murugappan (my legal ward as per Chennai Family Court, Order dated 20.11.2012), any further in any court, including Chennai Family Court, the Madras High Court and any other such courts, from today, 30 August

2015 onwards. You have no authority to make any agreements or legal commits on her behalf and can no longer represent her in any other legal forum. As a dependent daughter, I make the decision on who represents her.

You have failed to represent me in the proper manner in some cases, failed to represent me totally in other matters, given false information and compelled me to perform certain actions.

If you for any reason step into the hearings regarding the CMA tomorrow, it is nothing but a matter of breach of your professional ethics and acting contrary to this e-mail wherein I have cancelled your authority to represent me.

Regards
Visalakshi"

11. Therefore, we adjourned the case to 18.9.2015. On that date, the Mr.P.B.Suresh Babu, learned counsel entered appearance for the appellant. Since the respondent was unrepresented and since we did not want to receive any communication of the nature that the respondent is in the habit of sending, we directed the learned counsel for the appellant to check up whether anybody has entered appearance for the respondent and adjourned the case to 28.9.2015. On 28.9.2015, it was found that the respondent had not made any alternative arrangement. Therefore, we directed the issue of a notice to the respondent. The order passed by us on 28.9.2015 is as follows :

"The case was directed to be listed specifically before us, under orders of the Honourable Chief Justice, due to reasons which need not necessarily be recorded here. The case was listed on 11.9.2015. On that date, the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent stated that they had withdrawn their appearances, on account of the mail and letters sent by the respondent. Therefore, we adjourned the matter to 18.9.2015 with a direction to the Registry to print the name of the parties. Accordingly, the appeal was listed for hearing on 18.9.2015. On that date, the counsel stated that he was entering appearance for the appellant. Therefore, the

matter was adjourned to today. Today, Mr.P.B. Suresh Babu, learned counsel has entered appearance for the appellant.

2. Since the respondent is a resident of Canada and in view of the grievance that she had expressed in her letters, we direct the appellant to send e-mail to the respondent informing her that the appeal will be taken up for disposal on 12.10.2015. It may be indicated in the mail that if the respondent fails to appear either by herself or through any counsel, the appeal will be taken up for hearing on merits and disposed of.

3. Post the matter on 12.10.2015."

12. Thereafter, the matter came up on 13.10.2015. On 13.10.2015, the Registry placed before us, two envelopes received from the respondent addressed to the Registrar - General of this Court. Both of them had been posted from two different addresses at Chennai. But, they contained the signatures of the respondent, made at Canada. Therefore, we presumed that both these envelopes containing the counter were sent by the respondent after receiving the notices of hearing sent to her.

13. However, we did not wish to take any chance. Therefore, we ordered another fresh notice to be issued to the addresses at Chennai given in the envelopes. The order passed on 13.10.2015 reads as follows :

"Pursuant to the orders passed by us on 28.9.2015, the learned counsel for the appellant seems to have sent notices through five e-mail I.Ds. of the respondent. The appellant has filed an affidavit of service in S.R.No.8209 of 2015. It appears that the e-mails were sent on 28.9.2015.

2. Thereafter, two envelopes have been received, both addressed to the Registrar - General of this Court containing a counter affidavit sworn to by the respondent at Toronto, Canada. The counter affidavit has been sworn on 5.10.2015, presumably after receipt of the e-mail notices from the appellant. But interestingly, the envelopes have been registered in Chennai G.P.O., showing the sender's address as 'Visalakshi Murugan, 45th Main Road, Gandhi Nagar, Adyar, Chennai-20'. In the long cause title

found in the counter affidavit, the respondent has given the local address as 'C/O Mrs.C.P.Gnanavalli, G-6, Phase I, Golden Enclave, S.S.R.Pankajam Road, Saligramam, Chennai-93.'

3. In view of the fact that the counter affidavit does not give any indication about the receipt of notices, though there are other materials to show the receipt of e-mails, we direct the appellant to take private notice once again to both addresses namely 45th Main Road, Gandhi Nagar, Adyar, Chennai-20 and to the address at Saligramam returnable by 26.10.2015.

4. Post on 26.10.2015. The learned counsel for the appellant shall indicate in the notice that if the respondent is not represented either through an agent or through a counsel on 26.10.2015, the appeal will be heard and decided in her absence on merits."

14. Pursuant to the above order, the appellant sent notices to the two Chennai addresses of the respondent. One envelope returned with the endorsement that the address was incomplete, though the envelope reflected the very same address given by the respondent. The other envelope sent by registered post had been received by somebody in that address. Therefore, we presumed that the respondent has been made aware of the date of hearing fixed by us as 26.10.2015.

15. On 26.10.2015, when the matter came up for hearing, we wanted the Registry to check up whether any mail has been received from the respondent and therefore, we adjourned the case to 28.10.2015 for checking up. After checking up, the Registry put up a fax message received from the respondent. It was sent on 11.10.2015 at 23.44 Hrs. It will be useful to extract the contents of the fax message sent by the respondent, to show that she is clear about what we have taken note of and what the appellant, the lawyers and this Court have been subjected to. Therefore, the fax message is extracted as follows :

"The main HMOP was filed in 2006 and till date, no relief has been awarded to our daughter and me. The petitioner has taken out Rs.2.5 Crores loan to support other third parties and is hiding money in the names of his mother and brother. After

having spent considerable amount of money, time and efforts, I have till date seen no justice at the Madras High Court and Subordinate Courts. Without the relief that has been ordered by the Principal Family Court, Chennai, it is impossible for my daughter and me to live any longer. The Madras High Court must understand our critical situation and proceed with dismissing the CMA filed on frivolous grounds and thus render justice.

It must be noted that the petitioner tried to murder his own daughter in July 2014 and complaints have been filed with the police. In view of the same, any travel to India for our daughter, who is in poor health, is unsafe, as the petitioner has the intention to murder.

Any communication that is sent to the Madras High Court takes approximately 45 days to be communicated to or responded by the appropriate Department. Previous communication sent on 15 July 2015 was responded to on 31 August 2015. Hence, it is expected that the counter affidavit sent by speed post and received by the Madras High Court last week (7 October 2015) will be responded to after 2016 New Year. 2 separated speed post letters containing counter affidavit have been sent to the High Court and have been received on 7 and 8 October 2015.

The discrepancies in the modus operandi of the Madras High Court must also be pointed out. The Chief Justice, the Registrar (General) as well as the Judges have no concern about the severity of the legal forum they represent. One fine example is CMA 439/2015. It has been updated on the case status website with lawyer's names, who are not part of the case. The daily cause list shows a different set of names/lawyers and in the court itself, a different drama takes place, with another set of lawyers. So, in another superior forum, the falsehood, in which, the Madras High Court operates, that is 3 different representations of 1 case will definitely stand out (case status attached).

All the above discrepancies are noted for future representation. Besides this, the

lawyer/ judge buddy system and the judges/former judges buddy system that operates in the Madras High Court is also well known. It must be noted that other cases with the same petitioner have experienced similar situations in the High Court.

Whatever the outcome, a quick decision by the Madras High Court will help in providing relief. Matters can and will be taken to the Supreme Court and conducted with the help of pro bono human rights lawyers. It will clearly expose the Madras High Court's disregard for the existing laws as well as basic human rights. Justice delayed is justice denied. I hope that this High Court will render justice.
Sincerely
Visalakshi Murugappan"

16. Therefore, it will be clear that the respondent is aware of the date of hearing. She has requested this Court, rather directed this Court to render whatever decision it wants quickly without protraction. Hence, we have taken up the case for hearing on merits.

17. The main grievance of the appellant is that without giving adequate opportunity to file necessary documents, the Principal Family Court passed the order granting interim alimony. According to the learned counsel for the appellant, the Presiding Officer of the Family Court also in a way felt intimidated by the receipt of the letter dated 19.11.2014. The said letter was addressed by the respondent from Canada to the Honourable Chief Justice by name, with copies to the Principal Judge of the Family Court, Chennai. The contents of the letter dated 19.11.2014 are as follows :

"Honourable Justice Mr.Sanjay Kishan Kaul,
Re : H.M.O.P.No.3312/2006, interim
maintenance application u/s 24, Chennai PJ
Family Court

I am the respondent in the main H.M.O.P. No.3312/2006 and the petitioner in I.A.No.1930/ 2013 interim maintenance application under Section 24 filed in the Chennai Family Court and currently before the Principal Judge, Family Court.

After my estranged husband took large loans and left our daughter and myself in debts in Canada and returned to India, he

filed H.M.O.P. No.3312/2006 before the Chennai Family Court. After that, I have filed M.C.No.481/2008 for maintenance for our daughter and IAs for travel expenses and recovery of property. In 2013, I filed for interim maintenance u/s 24. Due to the delays the Chennai Family Court has left my daughter and me without means to cover even our basic expenses while my husband has failed to maintain the family.

It was heard by Judge Mr.Raja Chockalingam (retired) till November 2013, PJ Court Judge Mr. Baskar (transferred) till June 2014 and by Judge Mr.Yusuf Ali (soon to retire) currently. Hence, no Judge has been able to hear the interim maintenance case u/s 24 for more than 6 months and either the Judge is transferred or goes on retirement. It has been reopened twice and no orders have been passed. The current Judge Mr. Yusuf Ali has been away for more than 3 months and the previous Judge also did not pass orders for unknown reasons for 4 months and then was transferred.

I am single mother with no job and no source of income. I have to support my daughter, who was earlier hospitalized and also at a crucial point in life where she has to complete her 12th standard exams and enter university.

I have been regularly appearing for the suits but it has become impossible with the ways of this Court to actually obtain any kind of justice and relief thereof. The only way it seems is to immolate myself in front of the Madras High Court after circulating copies of this letter along with detailed copies of all court documents to the media, both local and foreign, I might actually get relief.

My estranged husband Ram Murugappan and his brother Laxman and his greedy family have been bribing Judges in the Family Courts and obstructing the course of justice. I believe this is another venture of theirs to endear themselves to Presiding Officers and find ways and means to prolong the suit and thus delay justice and finally deny it. Besides this, my husband through his family members, has threatened to kill me if I come to Tamil Nadu for the hearing.

For the last two hearings, neither my husband nor his advocate have appeared in Court. I have given full authorization to my lawyer and have filed necessary papers in court for my lawyer to represent me. Arguments have been completed but still there is no outcome.

I have attached below the number of hearing that have taken place in the Chennai Family Court although not a full list. You can see to yourself the poor justice system.

Is the Madras High Court and its Subordinate Courts a place for justice or does it seek blood on its hands ? Kindly render justice.

Thank You

Visalakshi Murugappan"

18. The docket orders passed right from the date of filing of the application for interim maintenance are produced by the learned counsel for the appellant. The docket orders passed by the Family Court would reflect as to what happened on every day of the proceedings. Therefore, they are presented in a tabular column, as follows :

S.No	Date	Contents of the proceedings
1	25.7.2013	Both present. Notice received by respondent. Call on 7.8.2013.
2	7.8.2013	Both present. Petitioner absent at 1 PM. Call on 21.8.2013
3	21.8.2013	Petitioner/Wife present. Respondent/Husband absent. For filing counter, otherwise order will be pronounced on 29.8.2013
4	29.8.2013	Both present. Counter filed. Adjourned to 6.9.2013
5	6.9.2013	Both present. Adjourned to 17.9.2013
6	17.9.2013	Both present. Enquiry by 4.10.2013
7	4.10.2013	Both present. Enquiry by 31.10.2013
8	31.10.2013	Both present. Enquiry by 5.11.2013
9	5.11.2013	Both present. Enquiry by 21.11.2013
10	21.11.2013	Both present. Enquiry at 12.40 PM. Call on 29.11.2013

S.No	Date	Contents of the proceedings
11	29.11.2013	Both present. Enquiry by 13.12.2013
12	13.12.2013	Petitioner/Wife present. Respondent/Husband absent. Enquiry by 17.12.2013
13	17.12.2013	Both present. Reported that petition Tr.O.P. is filed. Call on 7.1.2014
14	4.2.2014	Both present. Tr.O.P. pending. Call on 3.3.2014
15	3.3.2014	Respondent/Husband absent. Heard petitioner. For respondent's side arguments, call on 18.3.2014
16	18.3.2014	Petitioner/Wife present. Respondent/Husband present. Judicial Officer on Casual Leave. Call on 25.3.2014
17	25.3.2014	Petitioner/Wife present. Respondent/Husband present. For respondent's side arguments, call on 2.4.2014
18	2.4.2014	Petitioner/Wife present. Respondent/Husband present. Respondent's side arguments heard. For orders on 19.4.2014
19	19.4.2014	Judicial Officer on Duty. Reposted to 23.4.2014
20	23.4.2014	Suo motu reopened. For clarification call on 27.5.2014
21	27.5.2014	Petitioner/Wife absent. Respondent/Husband Present. Call on 10.6.2014
22	10.6.2014	For Clarification. Petitioner/Wife absent. Respondent/ Husband Present. Call on 12.6.2014
23	12.6.2014	For Clarification. Petitioner/Wife absent. Respondent/ Husband present. Call on 16.7.2014
24	16.7.2014	For Clarification. Heard Petitioner/Wife. At request of Respondent/Husband, adjourned to 30.7.2014 for Respondent/Husband side arguments (F)

S.No	Date	Contents of the proceedings
25	30.7.2014	Both present. Judicial Officer on Medical Leave. Call on 5.8.2014
26	5.8.2014	Both present. At request, on behalf of Respondent/Husband, adjourned to 12.8.2014 for arguments (F) (NFA)
27	12.8.2014	Both present. Heard the Respondent/Husband's side arguments. At request, adjourned to 27.8.2014 for placing of citation by the petitioner
28	28.8.2014	Petitioner/Wife present. Respondent/Husband Present. Judicial Officer on Casual Leave. Call on 6.10.2014
29	6.10.2014	For arguments. Both absent. Judicial Officer on Casual Leave. Declared holiday. Reposted to 7.10.2014. Call on 29.10.2014
30	29.10.2014	Both absent. For arguments on 21.11.2014
31	21.11.2014	Petitioner/Wife absent. Respondent/Husband present. Judicial Officer on Duty. Call on 15.12.2014
32	15.12.2014	Both present. At request, on behalf of Petitioner/Wife, adjourned to 18.1.2014 for arguments.
33	18.12.2014	Petitioner/Wife present. Respondent/Husband absent. 2009 2 LW 826, 1997 1 LW 807 and 2006 (4) LW 839 citations on the side of the Petitioner/Wife. Heard both sides. For orders on 30.12.2014
34	30.12.2014	For orders by 5.1.2015
35	5.1.2015	Judicial Officer on Casual Leave. Reposted to 9.1.2015
36	9.1.2015	Orders Pronounced

19. The learned counsel for the appellant also produced before us a set of documents, which the appellant sought to file before the Family Court along with an additional counter. In the set of documents that the appellant sought to file before the Family Court, he made a claim that the respondent had drawn a huge amount of money from the account in Canada. The additional

counter, which the appellant sought to file on 18.12.2014, which contained an endorsement 'received copy' and a signature of the counsel below the said endorsement, has been struck off.

20. Therefore, the short grievance of the appellant is (i) that without an opportunity to the appellant to file additional counter and additional documents and (ii) that by adopting intimidatory tactics, the respondent has forced the Principal Family Court to dispose of the matter, without recording any proper finding.

21. A careful look at the order passed by the Family Court would show that the Family Court had taken on file five documents produced by the respondent. In the documents filed by the respondent, there are only details of the properties owned by the appellant and the financial assistance availed by the appellant - husband. The documents by themselves did not appear to have indicated the monthly income of the appellant. An interim maintenance could be awarded only from out of the monthly income and not from out of the properties. Unless the respondent has established the actual monthly income and unless the Court has recorded any finding with regard to the monthly income, the order dated 9.1.2015 could not have been passed. Hence, we are of the considered view that the order of the Family Court is not in accordance with law.

22. Accordingly, the civil miscellaneous appeal is allowed, the order of the Principal Family Court is set aside and the matter remitted back to the Principal Family Court. The Principal Family Court shall give an opportunity to both parties to file additional documents indicating the monthly income of the appellant, so that the interim maintenance payable can be worked out as per the monthly income. But, as an interim measure, the appellant shall deposit with the Principal Family Court, a sum of Rs.5,00,000/- (Rupees five lakhs only). The respondent is permitted to withdraw the said amount without prejudice to her rights, if she wishes. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Principal Family Court,
Chennai.

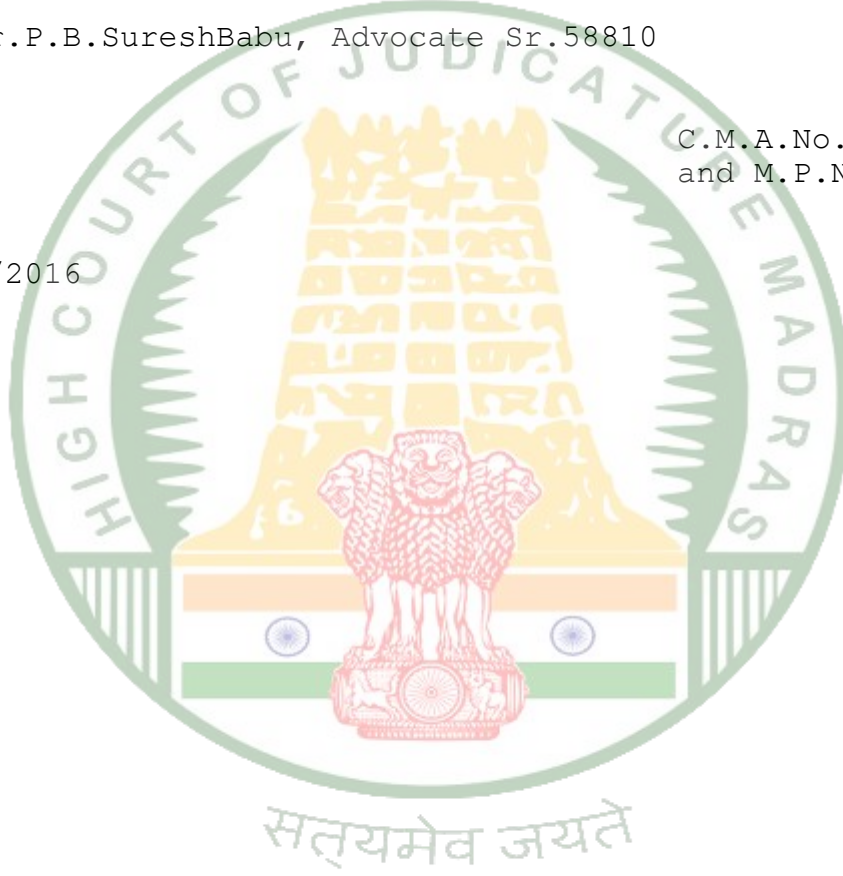
Copy to

The Section Officer,
VR Section,
High Court Madras.

+lcc to Mr.P.B.SureshBabu, Advocate Sr.58810

C.M.A.No.439 of 2015
and M.P.No.1 of 2015

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