

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.7.2015.

CORAM

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

C.M.A.No.2008 of 2014
and
M.P.Nos.1 and 2 of 2014

T.P.Reena

Appellant/Petitioner

vs.

T.John Peter

Respondent/Respondent

Civil Miscellaneous Appeal against the order dated 23.4.2014 in I.A.No.1793 of 2013 in O.P.No.176 of 2010 on the file of the Principal Judge, Family Court, Chennai.

For appellant : Mr.S.Venkatesh

For Respondents : Mrs.R.Sumithra

JUDGMENT

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

This appeal arises out of the refusal of the Family Court to award interim alimony.

2. Heard Mr.S.Venkatesh, learned counsel appearing for the appellant and Mrs.R.Sumithra, learned counsel appearing for the respondent.

3. The petitioner married the respondent on 29.5.1998. The marriage was according to the Christian rites. A girl child was born in the wedlock in the year 2000. However, the relationship became strained, forcing the appellant to file a petition for restitution in O.P.No.176 of 2010.

4. The respondent-husband filed two petitions in O.P.Nos.70 and 71 of 2011 praying for dissolution of marriage and also for custody of the minor child. All these three O.Ps are now clubbed together and taken up by the Family Court. It appears that evidence on the

side of the husband is over and the cases stand posted for the evidence on the side of the wife.

5. In the meantime, the appellant filed an application in I.A.No.1793 of 2013 claiming interim alimony. On the ground that the appellant was qualified and was also working in a School as Teacher, the Family Court dismissed the petitioner for interim alimony. However, in another application, the Family Court has awarded interim alimony for a sum of Rs.6500/- per month to the minor child. Therefore, aggrieved by the rejection of her application for interim alimony, the wife is on appeal.

6. The rival contentions revolve around a disputed question of fact as to whether the appellant is now working as a Teacher and making her livelihood or not. According to the appellant, she was employed as a temporary Teacher and she has now lost her job. According to the respondent/husband, the appellant deliberately left the job. Therefore, citing the decision of the Supreme Court to the effect that if a person is capable of earning livelihood but deliberately remained idle only for the purpose of extracting alimony, the same cannot be accepted by the court, the counsel for the respondent contends that the order of the Family Court was right.

7. But, we do not wish to go into this disputed question at the outset. There is no dispute about the fact that the respondent is working as a Professor and Head of the Department in an Engineering College. It is also not the contention of the respondent that the appellant is permanently employed as Teacher. In such circumstances, without oral and documentary evidence, it is not fair to deprive the appellant of interim alimony in total. Since the main O.Ps are already ripe for trial and the trial is also going on, we are of the view that a direction for payment of lumpsum at this stage with a direction to dispose of the main O.Ps within a time frame would meet the ends of justice.

8. Therefore, the appeal is disposed of with the following effect:-

1) The respondent is directed to pay a lumpsum of Rs.75,000/- within a period of two weeks from the date of receipt of copy of this judgment.

2) The respondent shall continue to pay interim alimony fixed for the minor daughter as per the order of the family Court without fail.

3) Both the parties shall go ahead without protracting the proceedings and try to conclude the O.Ps at an early date.

4) The Family Court shall endeavour to dispose of the main cases within a period of two months from the date of receipt of copy of this judgment. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ssk.

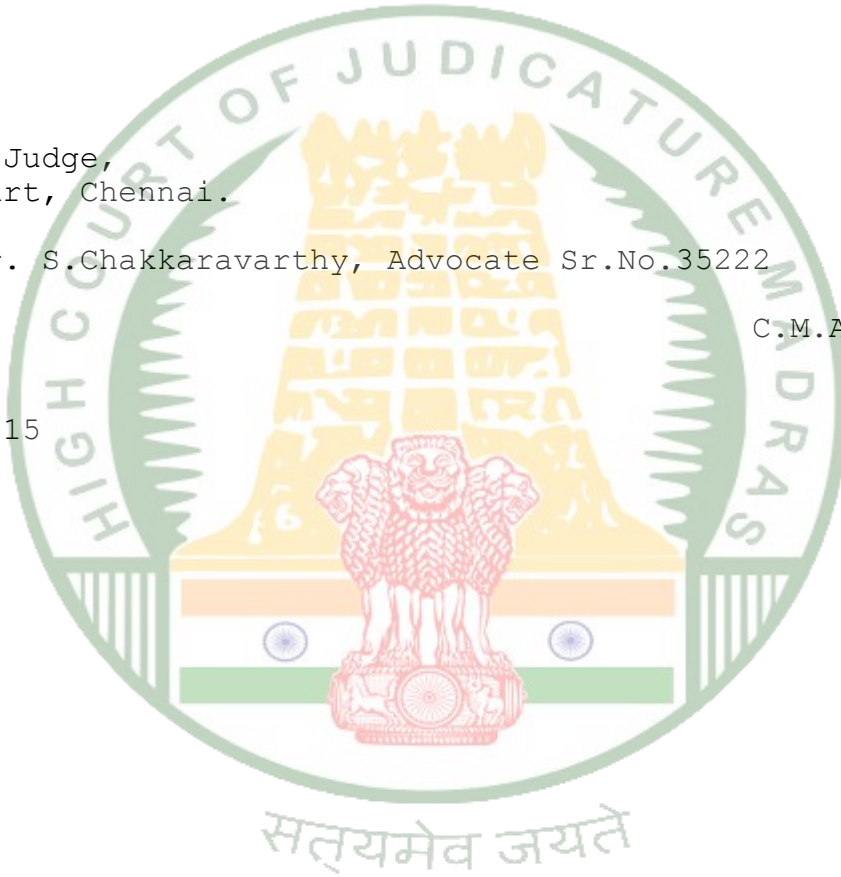
To

Principal Judge,
Family Court, Chennai.

1 cc to Mr. S.Chakkaravarthy, Advocate Sr.No.35222

C.M.A.No.2008 of 2014

Tej (co)
pmk.7.8.2015



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