

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Miscellaneous Second Appeal No.40 of 2014

and

Review Application No.105 of 2007

in

Civil Miscellaneous Second Appeal No.52 of 2003

C.M.S.A.No.40 of 2014

D.Shanmugam
S/o.K.Dhanapal

... Appellant

vs

S.Thilgavathy

... Respondent

Civil Miscellaneous Second Appeal filed under Section 104 of the Code of Civil Procedure read with Section 28 of the Hindu Marriage Act against the judgement of learned I Additional District and Sessions Judge, Cuddalore, passed in C.M.A.No.15 of 2013 on 21.12.2013 confirming the order of learned Sub Judge, Panruti, passed in E.A.No.140 of 2011 in E.P.No.26 of 2011 in H.M.O.P.No.34 of 1999 on 02.03.2013 and 15.03.2013.

Review Application No.105 of 2007

D.Shanmugam
S/o.K.Dhanapal

... Petitioner

vs

S.Thilgavathy

... Respondent

Review Application filed under Section 114 of the Civil Procedure Code, Or.47 R.1 & 2 r/w 114 of the Civil Procedure Code, seeking review of the judgment of this Court passed in C.M.S.A.No.52 of 2003 on 19.01.2004.

For Appellant/Petitioner : Mr.S.Rajkumar

For Respondent : Ms.R.Meenal

COMMON JUDGMENT / COMMON ORDER

The Civil Miscellaneous Second Appeal has been filed against the judgment of learned I Additional District and Sessions Judge, Cuddalore, passed in C.M.A.No.15 of 2013 on 21.12.2013 confirming the order of learned Sub Judge, Panruti, passed in E.A.No.140 of 2011 in E.P.No.26 of 2011 in H.M.O.P.No.34 of 1999 on 02.03.2013 and 15.03.2013.

2. The marriage between appellant and respondent took place on 05.12.1988 and out of the wedlock, a male child was born on 21.10.1989.

Respondent/wife has filed O.P.No.93 of 1993 on the file of learned Subordinate Judge, Cuddalore, seeking divorce and the same was decreed on 04.11.1993. Thereafter, respondent/wife filed O.P.No.40 of 1994 on the file of learned Subordinate Judge, Panruti, (re-numbered as O.P.No.34 of 1999) seeking maintenance in a sum of Rs.2,000/-. Court below, under order dated 29.03.2000, directed appellant/husband to pay a sum of Rs.1,800/- p.m. towards maintenance (Rs.1,200/- for wife and Rs.600/- for child). There against, appellant/husband filed C.M.A.No.32 of 2000 on the file of learned Additional District Judge cum Chief Judicial Magistrate, Cuddalore, which came to be dismissed under judgment dated 25.09.2001. Aggrieved, appellant/husband preferred C.M.S.A.No.52 of 2003 before this Court and the same was dismissed at the admission stage under judgment dated 19.01.2004. Respondent/wife filed E.P.No.51 of 2000 in O.P.No.34 of 1999 seeking recovery of a sum of Rs.1,47,751.25. Under orders dated 24.07.2007, Court below ordered recovery of a sum of Rs.2,200/- for 24 months from the appellant's salary and adjourned the case to 05.06.2007 and the execution petition was closed on 03.12.2007. Thereafter, respondent/wife filed E.P.No.26 of 2011 in O.P.No.34 of 1999 seeking recovery of a sum of Rs.6,000/- from the appellant's salary. Since there was no representation on behalf of appellant/husband, he

was set *ex parte* and attachment was ordered under order dated 15.09.2011. Against such order, appellant/husband filed E.A.No.140 of 2011 on the file of Subordinate Judge, Panruti. Under order dated 02.03.2013, the Court below allowed the application and required the appellant/husband to deposit a sum of Rs.1,40,000/- on or before 14.03.2013. There against, appellant/husband preferred C.M.A.No.15 of 2013 on the file of learned I Additional District and Sessions Judge, Cuddalore, which came to be dismissed under judgment dated 21.12.2013. Against such judgment, the present Civil Miscellaneous Appeal has been filed.

3. Heard learned counsel for appellant and learned counsel for respondent.

4. It was the contention of appellant/husband that the order of attachment came to be passed without notice to him and that he came to know about such order only upon deduction from his salary. It was the case of appellant/husband that the respondent's son has now attained the age of majority and there is no need to provide maintenance. On the other hand, it was the case of respondent/wife that the appellant/husband has been filing

petition after petition only to avoid payment of maintenance and the order of attachment came to be passed only after service of notice on appellant/husband. It was the further case of respondent/wife that she claimed only the amount which was payable to her son when he was a minor and that the Court below has directed payment of half of the sum payable. The Court below, after considering the submissions made on both sides and upon perusal of materials available, found that in the application seeking setting aside of *ex parte* order, the appellant/husband has informed that he came to know about such order through his relatives, but, in the appeal, he has informed that he came to know about such order only upon deduction from his salary. Hence, it was clear that the appellant/husband was well aware of the order of attachment. Further, the contention of appellant/husband that the respondent's son has attained majority and hence, he is not liable to pay maintenance was rejected by Court below on the reasoning that such contention could not be gone into in the appeal. On the above finding, the Court below has dismissed the appeal. This Court finds no error in the judgment under challenge.

5. Petitioner/husband has filed Review Application seeking review of the judgment of this Court passed in C.M.S.A.No.52 of 2003 on 19.01.2004. By way

of review application, petitioner/husband seeks to canvass the merits of his contentions which have been negated by the Court below. In passing orders in C.M.S.A.No.52 of 2003, this Court has observed as follows:

“8. The marriage between the appellant and respondent is not in dispute. A son by name Kamalakannan was born to the appellant and respondent is not also in dispute. It is not the case of the appellant that the respondent has sufficient means to maintain herself and also her child. The appellant has also not made out any case that he has been maintaining his son. The only contention that has been raised by the appellant before this court is that the respondent/wife has suppressed her real age at the time of the marriage. It is too late to raise such a plea and this plea is nothing but an invention to deny the payment of maintenance altogether. Except this, the appellant has not raised any other contention to assail the judgment and decree passed by the court below. On a careful consideration of the entire matter, it is crystal clear that the husband has been adopting dilatory tactics to deny the payment of maintenance to the respondent and therefore, I do not find any good or valid ground to interfere with the judgment and decree passed by the courts below.”

6. This Court finds no merits in the review petition.

In the result,

(i) Civil Miscellaneous Second Appeal No.40 of 2014 shall stand dismissed.

(ii) Review Application No.105 of 2007 shall stand dismissed.

No costs. Connected miscellaneous petitions are closed.

18.08.2016

Index:yes/no

Internet:yes

gm

To

1.The I Additional District and Sessions Judge,
Cuddalore.

2.The Sub Judge,
Panruti.

C.T.SELVAM, J

gm

Civil Revision Petition (PD) No.1812 of 2016

18.08.2016

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