

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2016

CORAM:

The HON'BLE MR. JUSTICE M.JAICHANDREN

and

The HON'BLE MR.JUSTICE S.BASKARAN

C.M.A.No.2411 of 2016

and

C.M.P.No.16816 of 2016

Jeevan Sethu ... Appellant/Petitioner

Vs.

1.Priya Jeevan Sethu

2.K.Ramya

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, against the order and decreetal order, dated 7.6.2016, made in I.A.No.982 of 2014 in O.P.No.152 of 2014, on the file of the III Additional Family Court, Chennai.

For Appellant : Mr.R.Neethi Perumal

For respondents : Ms.C.Shyaamala for R-1

JUDGMENT

(Judgment of the Court was made by M.JAICHANDREN, J.)

This Civil Miscellaneous Appeal has been filed before this Court against the order and decreetal order, dated 7.6.2016, made in I.A.No.982 of 2014, in O.P.No.152 of 2014, by the III Additional Principal Judge (III Additional Family Court), Chennai.

2 The appellant herein has filed the present appeal, stating, inter-alia, that the impugned order passed by the Court below, dated 7.6.2016, is contrary to law, against the weight of evidence and the facts of the case. It has been stated that the

impugned order had been passed, without taking note of the fact that the first respondent, who is the petitioner, in I.A.No.982 of 2014, had sufficient independent income for supporting herself and that she is an Income Tax assessee. The court below had failed to consider the fact that the first respondent herein was having an annual income of more than Rs.3 lakhs and had paid the appropriate tax thereon, voluntarily.

3 It had also been stated that the court below had failed to note that the appellant had filed an application, for restitution of conjugal rights, in I.A.No.1051 of 2014 and it had not decided the application filed under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act"). Instead, the court below had passed the impugned order, for interim alimony, erroneously. The court below had failed to note that the divorce petition had been filed by the first respondent herein and that the appellant was always ready and willing to live with her.

4 It had also been stated that the court below had failed to note that the provision of Section 24 of the Act is applicable only for the person, who does not have sufficient income to maintain herself. Further, it had failed to note that, from Ex.R.2- agreement, for handing over gold / diamond jewels and silver items, it was clear that the first respondent had taken custody of all the jewels purchased by the appellant, having a value of nearly Rs.25 lakhs. Thus, the appellant had been left with no source of income. It had also been stated that the income of the appellant had not been proved by the first respondent. However, the court below had ordered the payment of Rs.20,000/- per month, as an interim alimony, to the first respondent, erroneously.

5 Per contra, the learned counsel appearing on behalf of the first respondent had submitted that she had filed the interlocutory application, in I.A.No.982 of 2014, in O.P.No.152 of 2014, under Section 24 of the Act, seeking to pay a sum of Rs.75,000/-, per month, as interim maintenance and a sum of Rs.1 lakhs towards litigation expenses, every year, till the disposal of the Original Petition. She had further stated that the marriage between the appellant and the first respondent was solemnized, on 11.2.1996. Three children were born out of the wedlock. The appellant is a business man, who has been doing business in the name and style of "Jeevan Info Media", which has been one of the leading advertising modeling companies, in Chennai. She had further stated that the appellant is running a lodge, in Big Street, Triplicane, Chennai, containing 25 rooms. From the evidence available, it is clear that the appellant has sufficient income from his business activities.

6 It had been further submitted that, based on such evidence and taking into consideration the fact that the first respondent and her children are in need of financial support, for their maintenance, the Court below had passed the impugned order, dated 7.6.2016, directing the appellant to pay a sum of Rs.20,000/-, per month, to the first respondent, from the date of the petition, i.e., 13.3.2014, as interim alimony and to pay a sum of Rs.20,000/- towards litigation expenses. However, the appellant had not complied with the direction issued by the court below, by its order, dated 7.6.2016. In fact, the appellant has been dragging on the Original Petition filed by the first respondent, before the Family Court, with the mala fide motive of causing hardship and mental agony to the first respondent and her children. In such circumstances, the learned counsel appearing on behalf of the first respondent has prayed that the present Civil Miscellaneous Appeal, filed by the appellant, be dismissed, with costs.

7 We have heard the learned counsels appearing on behalf of the appellant, as well as the first respondent. We have also perused the records available before this Court.

8 We are convinced that the impugned order passed by the court below, dated 7.6.2016, in I.A.No.982 of 2014, in O.P.No.152 of 2014, does not suffer from any illegality, as claimed by the appellant. The court below had passed the impugned order, after rightly taking into account the businesses carried on by the appellant and the income that the appellant ought to be earning from the said businesses. Even though the first respondent had claimed a sum of Rs.75,000/-, per month, as interim maintenance and Rs.1,00,000/- towards litigation expenses, every year, till the disposal of the Original Petition, in O.P.No.152 of 2014, the court below had granted only a sum of Rs.20,000/-, per month, as interim alimony, to the first respondent and her children, two of whom are pursuing their studies, at the college level, and Rs.20,000/- towards litigation expenses.

9 This Court is of the considered view that granting of Rs.20,000/-, per month, as interim alimony, to the first respondent, along with a sum of Rs.20,000/- towards litigation expenses, is reasonable. Further, the court below had granted the interim alimony, after considering all the relevant factors, including the status and standard of life which the first respondent and her children had been used to. Therefore, the claims made by the appellant, in the present Civil Miscellaneous Appeal, do not carry any merit and therefore, they are liable to be rejected. Accordingly, the Civil Miscellaneous Appeal stands

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vvk

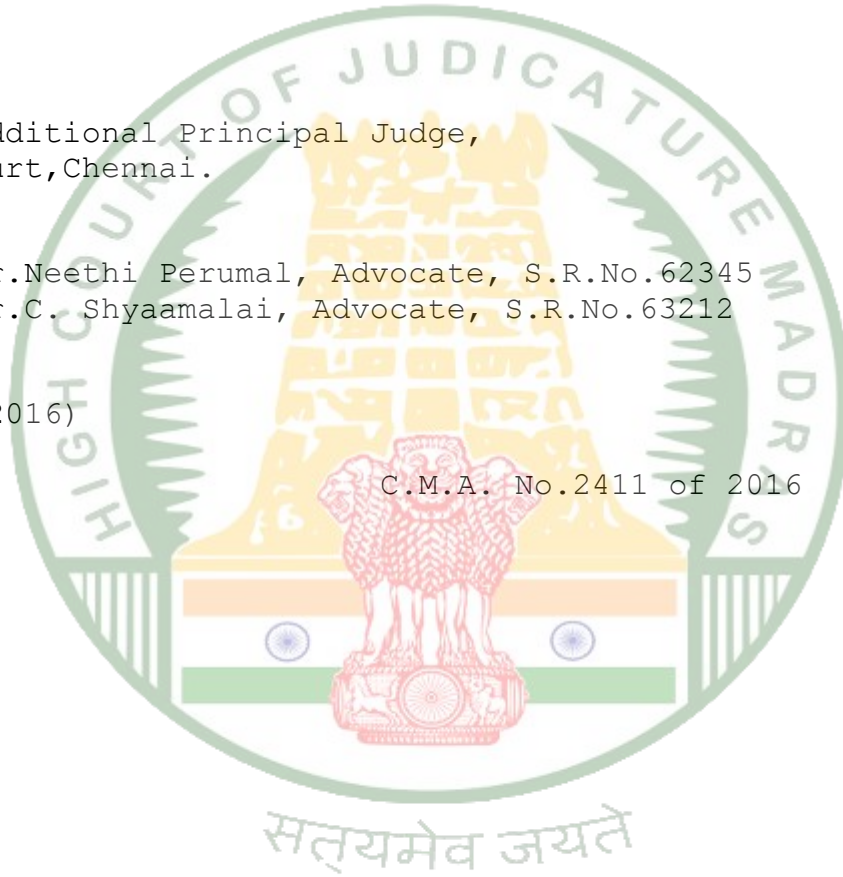
To

The III Additional Principal Judge,
Family Court, Chennai.

+2cc to Mr.Neethi Perumal, Advocate, S.R.No.62345
+3cc to Mr.C. Shyaamalai, Advocate, S.R.No.63212

sm(CO)
md(23/11/2016)

C.M.A. No.2411 of 2016



WEB COPY