

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.01.2019

CORAM:

THE HON'BLE MR.JUSTICE V.PARTHIBAN

CRL.REV.CASE NO.391 OF 2016 &
CRL.M.P.NO.2605 OF 2016 AND
CIVIL REV.PETITION NO.1936 OF 2008

M.Mani

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Petitioner in
Crl.R.C.391 of 2016 &
Respondent in
C.R.P.1936 of 2008

Versus

Kaveriammal

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Respondent in
Crl.R.C.391 of 2016 &
Petitioner in
C.R.P.1936 of 2008 &

Prayer in Crl.R.C.No.391 of 2016:

This Petition is filed under Section 397 r/w 401 Cr.P.C., praying to set aside the order dated 16.4.2015 made in M.C.No.10 of 1989 passed by the Family Court, Dharmapuri.

Prayer in CRP (NPD) No.1936 of 2008:

This Petition is filed under Section 115 CPC, praying to set aside the judgment and decree dated 26.11.2007 in CMA No.34 of 2005

passed by the Addl.District Judge (Fast Track Court), Dharmapuri, confirming the fair and decretal order dated 17.06.2004 in I.A.No.63 of 2003 in M.O.P.No.25 of 1989 passed by the Sub Court, Dharmapuri.

For Petitioner in
Crl.R.C.391 of 2016 & : Mr.V.Sakkarapani
Respondent in
C.R.P.1936 of 2008

Respondent in
Crl.R.C.391 of 2016 & : Mr.D.Sivakumaran
Petitioner in
C.R.P.1936 of 2008 &

COMMON ORDER

Since both the matters are inter-linked and filed by the same parties, they are taken up together and being disposed of by this common order.

2. While the Criminal Revision Petition has been filed by the petitioner/husband against the order dated 16.4.2015 in M.C.No.10 of 1989 passed by the Family Court, Dharmapuri enhancing the maintenance, the Civil Revision Petition has been filed by the petitioner/wife against the ex parte order dated 26.11.2007 in CMA

No.34 of 2005 passed by the Addl.District Judge (Fast Track Court), Dharmapuri, confirming the order dated 17.06.2004 in I.A.No.63 of 2003 in M.O.P.No.25 of 1989 passed by the Sub Court, Dharmapuri, granting the divorce.

2. For the sake of convenience, the parties to the lis, will be hereinafter referred to as 'husband' and 'wife' respectively.

3. The case on hand has a chequered history, traversing along the judicial system for more than three decades. The husband filed a petition in M.O.P. No.25/89 before the Family Court, Dharmapuri for dissolution of marriage, which petition, after more than a decade and half, saw the light of the day by way of an ex parte decree on 21.3.2003. Against the said ex parte decree, the wife filed an Interlocutory Application in I.A.No.68 of 2003 seeking to set aside the ex parte decree dated 21.03.2003. By order dated 17.6.2004, the Family Court, Dharmapuri rejected the said Interlocutory Application, against which, an appeal in C.M.A.No.34 of 2005 was filed before the Addl.District Judge (Fast Track Court), Dharmapuri. By judgment dated 26.11.2007, the said appeal came to be dismissed on the ground that the wife had

remained ex parte all along and had not shown inclination to prosecute the case. Against the said judgment and decree dated 26.11.2007, the wife has preferred the present C.R.P. No.1936 of 2008 seeking to set aside the exparte decree of divorce.

4. In the Maintenance Case in M.C. No.10/1989, the learned Judicial Magistrate No.II, Dharmapuri ordered maintenance of Rs.300/- per month and also an amount of Rs.1,500/- per year towards clothing, rent, medical expenses, etc. The said order was challenged, by the husband against the grant of maintenance, while the wife filed revision seeking enhancement. The petition filed by the husband was dismissed confirming the order passed by the learned Judicial Magistrate and in the revision filed by the wife, maintenance was directed to be paid from the date of petition instead of from the date of order in the maintenance case.

5. The wife filed C.M.P.No.3979/04 in M.C. No.10/1989 seeking enhancement of maintenance. On the constitution of Family Court, Dharmapuri, the above case was transferred to the file of the Family Court, Dharmapuri and renumbered as F.C. Cr. M.P. No.27/2014 and

an order was passed by the Family Court, Dharmapuri on 16.4.2015 enhancing the monthly maintenance from Rs.300/- to Rs.1,500/- and the annual lump sum amount from Rs.1,500/- to Rs.5,200/-. Challenging the said order, the husband has filed the present CrI. R.C. No.391 of 2016.

6. This Court, with a view to have an amicable settlement of the issue, keeping in mind that the matrimonial dispute has been dragged on through the various Courts for more than three decades, referred the matter for mediation, at the request of the learned counsel on either side, with the fond hope that there would be an amicable settlement so that the issue can be given a quietus. However, the mediation talks have failed, as usual, as could be seen from the communication addressed to this Court by the Mediation and Conciliation Centre.

7. On an overall appreciation of the matter, this Court felt that it would not be prudent at this distant point of time to get along with the case on merits as it would only lead to more incriminations and recriminations being thrown against either side, in view of the grounds on which the divorce itself has been sought for three decades back.

Therefore, it would not be appropriate to decide the matter on merits. However, the learned counsel appearing for the wife would submit that lower appellate Court confirmed the ex parte decree while dismissing the appeal on the ground of efflux of time, but that could not be the ground, as this Court has held that even if no reason is given for the person who was set ex parte, the Court could set aside the ex parte decree. Reliance was placed on the judgment of this Court in “(**Anbalagan vs. Periasamy and another**) reported in (1997 (2) MLJ 69).

8. On the other hand, learned counsel appearing for the husband submitted that the husband himself is finding it difficult to make both ends meet and, therefore, the enhancement ordered by the lower appellate Court is on the higher side and, accordingly, the same requires interference.

9. Heard the learned counsel on either side and perused the materials available on record.

10. On a careful consideration of the materials available on record, it appears that the trial court has considered the issue in depth and due to non-appearance of the wife repeatedly, while setting her ex parte, decided the matter in favour of the husband and granted ex parte decree of divorce, which has been confirmed by the lower appellate Court. After three decades, setting at naught the entire issue, at present if once again the matter is taken up afresh, it would only reignite the burns, which would have already started subsiding. Though the aid of the judgment of this Court reported in 1997 (2) MLJ 69 (cited supra) is pressed into service, on a holistic view of the case, this Court is of the view that reopening the issue would not be in the best interests of either side. Therefore, this Court is inclined to confirm the decree of divorce passed by the trial court in M.O.P. No.25/89, as has been confirmed by the lower appellate Court in C.M.A. No.34/05. Therefore, the Civil Revision Petition filed by the wife deserves to be dismissed.

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12. Insofar as the Criminal Revision filed by the husband challenging the enhance of maintenance is concerned, a perusal of the order passed in F.C.Cr. M.P. No.27/2014 clearly reveals that the Family

Court has taken into consideration the escalation in price and the prevailing cost of living, felt that the monthly maintenance at Rs.300/- and annual lump sum payment at Rs.1,500/- ordered by the learned Magistrate is on lower side and the same requires enhancement and, accordingly, enhanced the monthly maintenance to Rs.1,500/- and the annual lumpsum payment to Rs.5,200/-.

13. The spiraling cost of present living reflects unbearable even for a highly paid person to make both ends meet for the entire month. That being the case, a lady, that too an aged lady, definitely would be requiring atleast a basic amount to satisfy her monthly wants. In the present day, amounts running to thousands of rupees would not be sufficient to satisfy the daily needs. That being the case, the enhancement of monthly maintenance to Rs.1,500/- ordered by the Family Court could only be termed as pittance and cannot be said to be exorbitant or too excessive. Further, the husband is duty bound to maintain his wife, even after divorce, as has been time and again reiterated by the various judicial forums. That being the case, the above enhancement to Rs.1,500/- per month cannot be said to be high or excessive and therefore, no interference is called for with the

enhancement ordered by the Court below.

14. Insofar as the enhancement of annual lump sum payment to Rs.5,200/- is concerned, a lady has necessities over every month and definitely, it is the duty of the husband, though being divorced husband, to look after her needs. Though he may not be able to maintain her in high manner, definitely, the husband is supposed to maintain her in such a manner that her modesty and her outlook in the general public does not get denigrated. The cost of living index rising day by day, with the prices of all the commodities sky rocketing, the annual lumpsum payment at Rs.5,200/-, cannot be said to be on the higher side. Therefore, this Court is of the considered view that no interference is called for with the enhancement ordered by the Family Court.

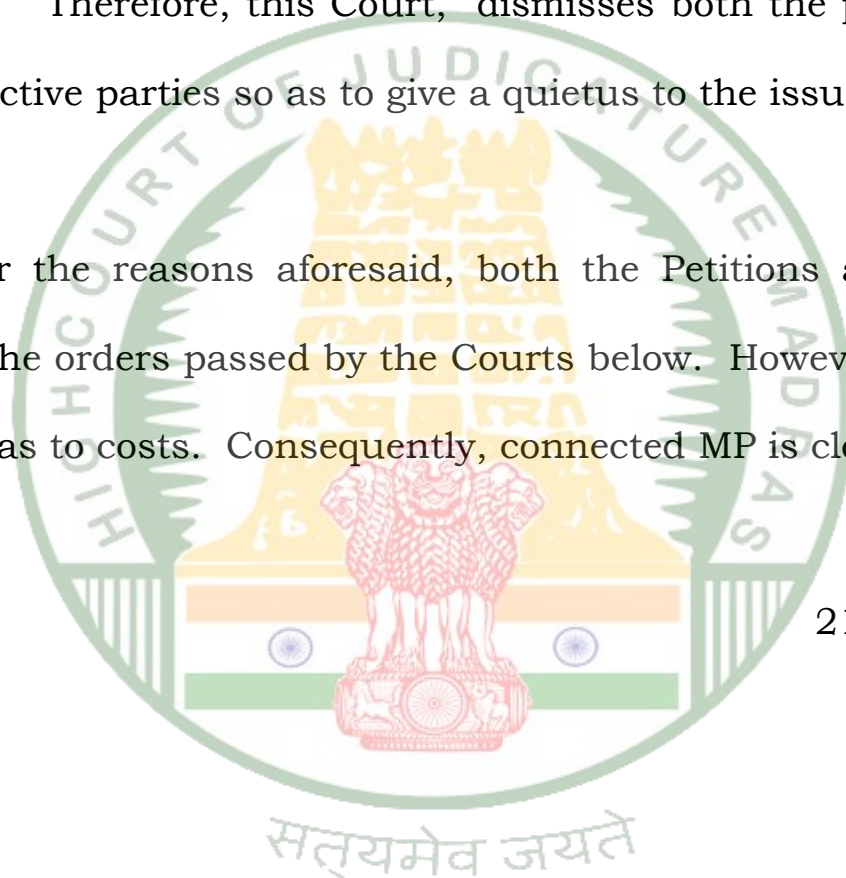
15. The parties have been throwing mud at each other over the last three decades. This Court having dismissed the petitions filed by both the husband and wife, for the reasons aforesaid, only feels that it is high time that both the spouses should look after their lives in their own way from the amounts that is available in their packets. Further, the

husband should also see to it that his wife is not put to much inconvenience by depositing the maintenance in a timely manner and the wife should also see to it that the protracted litigation is put an end to by not going at the back of the husband at every available opportunity. Therefore, this Court, dismisses both the petitions, filed by the respective parties so as to give a quietus to the issue.

16. For the reasons aforesaid, both the Petitions are dismissed confirming the orders passed by the Courts below. However, there shall be no order as to costs. Consequently, connected MP is closed.

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V.PARTHIBAN, J.

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