



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU**

**C.M.A(MD)No.1162 of 2016
C.M.P.(MD) No.10402 of 2016**

Ramachandran ... Appellant/Respondent

Vs.

Subapriya ... Respondent/Petitioner

PRAYER: The Civil Miscellaneous Appeal is filed under Section 19 (1) of Family Court Act, against the Fair and Decreetal Order dated 20.07.2016 passed in H.M.O.P.No.123 of 2016 on the file of the Family Court, Tirunelveli.

For Petitioner : Mr.F.X.Eugene

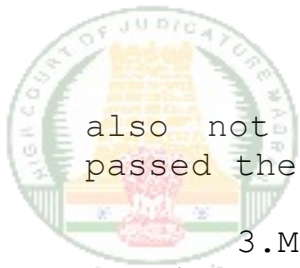
For Respondent : Mr.P.T.Ramesh Raja

ORDER

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

The appellant is the husband of the respondent. Marriage between the respondent and the appellant herein was solemnized on 29.03.2013 at Kovilpatti as per Hindu Rites and customs and out of the wedlock, on 31.12.2013 a male child was born.

2.According to the respondent/petitioner, appellant has treated her with cruelty, so also her mother and she was also driven out of the home and not stopped with that the appellant herein also filed a petition for divorce in H.M.O.P.No.159 of 2014 and got an order of divorce, which later on got set aside. The respondent would submit that she has also filed a petition for maintenance under Section 125 Cr.P.C. and it was ordered and challenging the same, the husband filed C.R.P.(MD) No.618 of 2016 and the same is pending on the file of this Court. Since the appellant has never cared to maintain herself and the child, she was constrained to file H.M.O.P.No.123 of 2016 for restitution of conjugal rights. Though oral evidence was adduced by the respondent, the appellant did not cooperate with the Court and



also not crossed the respondent and therefore, the Court has passed the impugned order allowing the petition.

3.Mr.F.X.Eugne, learned counsel appearing for the appellant submitted that the petitioner as on today is out of employment and is in search of a job and since he went in search of a job he could not be present before the Court for the purpose of cross-examining the respondent and a chance may be given to him for deciding the matter on merits.

4.Per contra, Mr.P.T.Ramesh Raja, learned counsel for the respondent would submit that even though the petitioner has filed a petition for maintenance and the same has been ordered, the appellant has not deposited any amount and the respondent as well as her child are in the mercy of her parents and since the appellant has not afforded any plausible reason for not cross-examining the witness, the Family Court has rightly allowed the petition and prays for dismissal of the Civil Miscellaneous Appeal.

5.This Court considered the rival submissions and also perused the materials on record.

6.The fact remains that H.M.O.P.No.159 of 2014 filed by the appellant herein is pending and the petition for maintenance filed by the respondent has been ordered which is now the subject matter of challenge in C.R.P.(MD) No.618 of 2016 before this court.

7.In the light of the above submission made by the learned counsel for the appellant, this Court is of the view that a final opportunity may be given to the appellant to cross-examine the respondent/P.W.1 by allowing this Appeal, of course, by putting the appellant on terms.

8.In the result, the Civil Miscellaneous Appeal is allowed. The Fair and Decreetal order dated 20.07.2016, passed in H.M.O.P.No.123 of 2016 by the Family Court, Tirunelveli are set aside, subject to the condition that the appellant herein shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) by way of Demand Draft to the respondent herein on or before 24.11.2016, failing which the original Fair and Decreetal Order dated 20.07.2016 stands restored. No costs. Consequently, connected Miscellaneous petition stands closed.

For Reporting compliance, call the matter on 28.11.2016.

Sd/-

Assistant Registrar(CO)



To

1 The Judge,
Family Court,
Tirunelveli.

2 Ramachandran
S/O.Ramraj,
Old Door No.40,
New Door No.32,
Manthithoppu Road,
Opposite to Jayasri Mahal,
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3 Subapriya
W/O.Ramachandran
H.199, Anbunagar,
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