

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Civil Miscellaneous Appeal No.1337 of 2017
and C.M.P.No.7005 of 2017

A.Nadarajan Appellant/Petitioner/Respondent

Vs.

1.Kavitha

2.Minor.Kanishka

D/o.Nadarajan

(Minor 2nd petitioner, rep. By her
next friend and natural guardian
her mother, the first petitioner herein)

... Respondents/Respondent/Petitioner

Prayer:- Civil Miscellaneous Appeal filed under Section 19
of the Family Court Act, against order dated 03.11.2016 passed
in I.A.No.441 of 2016 in M.O.P.No.354 of 2014 on the file of
Family Court at Pondicherry.

For Appellant : Mrs.Elizabeth Ravi
for Mr.S.Subbiah

For Respondents : Mr.K.Thenrajan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Civil Miscellaneous Appeal has been directed against
the order dated 03.11.2016 passed in I.A.No.441 of 2016 in
M.O.P.No.354 of 2014 by the Family Court, Pondicherry.

2. The appellant herein as petitioner has filed M.O.P.No.354
of 2014 on the file of the trial court for getting the relief of
dissolution of marriage, wherein, the present 1st respondent has
been arrayed as respondent.

3. During pendency of the same, the 1st respondent herein as
petitioner has filed I.A.No.441 of 2016 under Section 24 of the
Hindu Marriage Act, 1955, praying to direct the respondent

therein to give interim monthly maintenance and also litigation expenses.

4. The trial court, after considering the available evidence on record, has allowed the petition in part and thereby directed the respondent to give an interim monthly maintenance to the 1st petitioner and Rs.1,000/- to the 2nd petitioner from the date of filing of M.O.P.No.354 of 2014. Further the trial court has directed the respondent to give litigation expenses to the 1st petitioner to the tune of Rs.1,000/-. As against the order passed by the trial court, the present Civil Miscellaneous Appeal has been preferred by the respondent as appellant.

5. The learned counsel appearing for the appellant/respondent has raised the following points:-

(1) The appellant/respondent is nothing but a Painter and not having sufficient means to pay interim monthly maintenance as well as litigation expenses as directed by the trial court.

(2) Since I.A.No.441 of 2016 has been filed under Section 24 of the Hindu Marriage Act, 1955, the 2nd petitioner is not entitled to get interim monthly maintenance.

(3) The trial court has directed the respondent to pay the interim monthly maintenance from the date of filing of M.O.P.No.354 of 2014 instead of date of filing of I.A.No.441 of 2016.

6. The learned counsel appearing for the respondents/petitioners has contended to the effect that on the basis of averments made in the affidavit and also on the basis of the relationship between the parties, the trial court has rightly passed the impugned order and the same does not require any interference.

7. It is an admitted fact that the appellant as petitioner has filed M.O.P.No.354 of 2014 on the file of the trial court for getting the relief of dissolution of marriage held between him and respondent therein. It is also equally an admitted fact that during the pendency of M.O.P.No.354 of 2014, I.A.No.441 of 2016 has been filed under Section 24 of the Hindu Marriage Act, 1955.

8. As mentioned supra, the trial court has passed the impugned order by way of allowing I.A.No.441 of 2016 in part.

9. The first and foremost contention put forth on the side of the appellant/respondent is that the appellant/respondent is not having sufficient means to give interim monthly maintenance and also litigation expenses to the respondents/petitioners.

10. It is an admitted fact that the 1st respondent/1st

petitioner is the legally wedded wife of the petitioner. Considering the fact that the 1st respondent/1st petitioner is the legally wedded wife of the appellant/respondent, he is bound to maintain her. Further on the side of the appellant/respondent, it has not been positively established that the 1st respondent/1st petitioner is having sufficient means to maintain herself. Under the said circumstances, the first contention put forth on the side of the appellant is sans merit.

11. The second contention put forth on the side of the appellant/respondent is since I.A.No.441 of 2016 has been filed under Section 24 of the Hindu Marriage Act, 1955, the 2nd petitioner is not entitled to get interim monthly maintenance.

12. Considering the fact that M.O.P.No.354 of 2014 has been filed under the relevant provision of Hindu Marriage Act, 1955, and I.A.No.441 of 2016 has been filed under Section 24 of the Hindu Marriage Act, 1955, as per Section 24 of the said Act, the 1st petitioner is entitled to get interim monthly maintenance and no provision is made under the said section to give interim monthly maintenance to children or child. Under the said circumstances, the second contention put forth on the side of the appellant/respondent holds good.

13. The third contention put forth on the side of the appellant/respondent is that the trial court has directed the appellant/respondent to pay interim monthly maintenance to both the petitioners from the date of filing of M.O.P.No.354 of 2014 instead of from the date of filing of I.A.No.441 of 2016.

14. Considering the above aspect, this court is of the view that the 1st petitioner is entitled to get interim monthly maintenance from the date of filing of I.A.No.441 of 2016. Under the said circumstances, this Civil Miscellaneous Appeal is liable to be allowed in part.

In fine, this Civil Miscellaneous Appeal is allowed in part without cost. The order passed in I.A.No.441 of 2016 in M.O.P.No.354 of 2014 by the trial court is modified as follows:-

"The 1st petitioner is entitled to get interim monthly maintenance to the tune of Rs.3,000/- from the date of filing of I.A.No.441 of 2016 and also litigation expenses to the tune of Rs.1,000/- and to that extent, I.A.No.441 of 2016 is allowed in part. In respect of the other reliefs granted by the trial court, are set aside."

Consequently, connected C.M.P.No.7005 of 2017 is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

nvsri

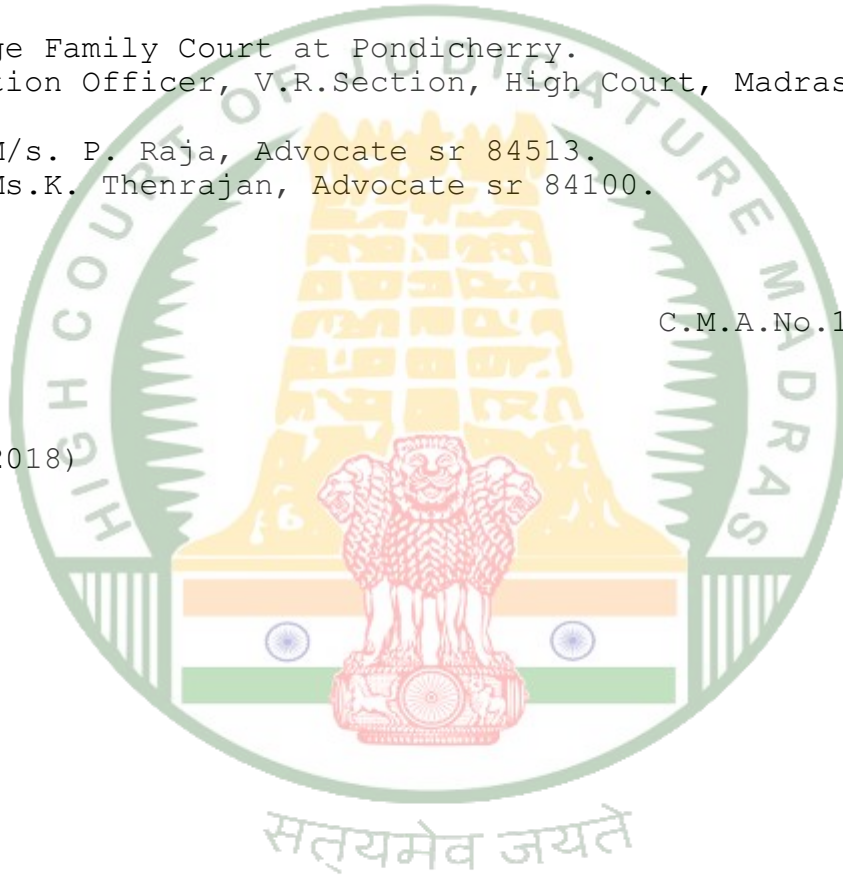
To

- 1.The Judge Family Court at Pondicherry.
- 2.The Section Officer, V.R.Section, High Court, Madras.(2 copies)

- +1 CC to M/s. P. Raja, Advocate sr 84513.
+1 cC to Ms.K. Thenrajan, Advocate sr 84100.

C.M.A.No.1337 of 2017

MP(CO)
SP(10/01/2018)



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