

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM  
and  
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.1612 of 2017  
and  
C.M.P.No.8540 of 2017

M.Annamalai ... Appellant/Respondent/Petitioner

Vs

Selvi @ Sarasu ... Respondent/Petitioner/Respondent

Civil Miscellaneous Appeal preferred under Section 19 of Family Courts Act, 1984, against the fair and decreetal order dated 26.09.2016 made in I.A.No.3736 of 2011 in O.P.No.2041 of 2011 on the file of the III Additional Principal Family Court, Chennai.

For Appellant : Mr.S.Thiruvengadam

For Respondent : Ms.P.Suganya  
for M/s.Majestic Law Firm

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal is directed against the order dated 26.09.2016, passed in O.P.No.2041 of 2011, by the III Additional Family Court, Chennai.

2.The appellant herein, as petitioner, has filed O.P.No.2041 of 2011, on the file of the trial Court, for getting the relief of divorce, wherein, the present respondent has been shown as respondent. During pendency of the same, the respondent, as petitioner, has filed an application in I.A.No.3736 of 2011, under Section 24 of the Hindu Marriage Act, 1955, praying to pass an order of interim monthly maintenance.

3.The trial Court after considering the rival contentions put forth on either side, has allowed the petition filed in

I.A.No.3736 of 2011 partly and thereby, directed the respondent therein to pay interim monthly maintenance of Rs.5,000/- to the petitioner, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

4.The learned counsel appearing for the appellant has contended to the effect that the respondent, as petitioner, has already filed M.C.No.47 of 2011 under the Domestic Violence Act, 2005. At the time of disposal, the respondent therein/appellant herein has been directed to pay a sum of Rs.5,000/- per mensem to the petitioner. Further, the present appellant has filed O.P.No.2041 of 2011 on the file of the trial Court for getting divorce. During pendency of the same, the respondent, as petitioner, has filed I.A.No.3736 of 2011 for getting interim monthly maintenance. The trial Court, without considering the fact that in M.C.No.47 of 2011, the appellant herein has already been directed to pay a sum of Rs.5,000/- to the respondent/petitioner, has erroneously directed the respondent (appellant herein) in I.A.No.3736 of 2011 to pay another sum of Rs.5,000/- per mensem and further, the appellant is not having sufficient means to pay a sum of Rs.10,000/- in aggregation towards maintenance and therefore, the order passed in I.A.No.3736 of 2011 is liable to be set aside.

5.The learned counsel appearing for the respondent has contended that the respondent/petitioner has already filed M.C.No.47 of 2011 under the Domestic Violence Act, 2005. At the time of disposal, the trial Court has directed the respondent therein to pay a sum of Rs.5,000/- per mensem to the petitioner and even the respondent therein has not paid the same properly. It is also contended that the respondent therein, as petitioner, has filed O.P.No.2041 of 2011 for getting divorce. During pendency of the same, the respondent/petitioner has filed I.A.No.3736 of 2011 under Section 24 of the Hindu Marriage Act, 1955. The trial Court after considering the over all circumstances available on record, has rightly awarded interim monthly maintenance of Rs.5,000/- by way of passing the impugned order and therefore, the impugned order passed by the trial Court need not be set aside.

6.It is an admitted fact that the respondent/petitioner, as petitioner, has already filed M.C.No.47 of 2011, wherein, at the time of disposal, the present appellant has been directed to pay a sum of Rs.5,000/- per mensem to the respondent/petitioner. It is also equally an admitted fact that the appellant, as petitioner, has filed O.P.No.2041 of 2011 on the file of the trial Court for getting divorce. During pendency of the same, I.A.No.3736 of 2011 has been filed by the respondent/petitioner under Section 24 of the Hindu Marriage Act, 1955.

7.The trial Court has awarded interim monthly maintenance of Rs.5,000/-.

8.The main contention put forth on the side of the appellant/ respondent is that he is not having sufficient means to pay the aggregated amount of Rs.10,000/- per mensem to the respondent/ petitioner.

9.As adverted to earlier, in M.C.No.47 of 2011, the concerned Judicial Magistrate has directed the present appellant/petitioner to pay a sum of Rs.5,000/- per mensem to the petitioner therein.

10.Considering the fact that in M.C.No.47 of 2011, a specific order has been passed to the effect that the present appellant/respondent therein to pay a sum of Rs.5,000/- per mensem to the respondent/petitioner, this Court is inclined to modify the quantum fixed in the order passed in I.A.No.3736 of 2011 as stated infra.

11.As mentioned supra, the respondent/petitioner is the legally wedded wife of the appellant/respondent. Considering the aforesaid factual circumstances and also considering the contention put forth on the side of the appellant/respondent, this Court is of the view that in addition to Rs.5,000/- awarded in M.C.No.47 of 2011, Rs.2,000/- can be given as interim monthly maintenance in I.A.No.3736 of 2011 and in aggregation, the appellant/respondent is bound to pay Rs.7,000/- to the respondent/petitioner. With the above modification, this Civil Miscellaneous Appeal is liable to be allowed in part.

12.In fine, this Civil Miscellaneous Appeal is allowed in part. The quantum of interim monthly maintenance fixed in the order passed in I.A.No.3736 of 2011 in O.P.No.2041 of 2011 is modified as follows :

The appellant/respondent is directed to pay Rs.2,000/- per mensem to the respondent/petitioner, in addition to the amount awarded in M.C.No.47 of 2011.

13.The trial Court is directed to dispose of O.P.No.2041 of 2011 before the end of December 2017 and report the same to the Registry without fail.  
No costs. Connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The III Additional Principal Family Court,  
Chennai.

+lcc to Mr.S.Thiruvengadam, Advocate, S.R.No.73329

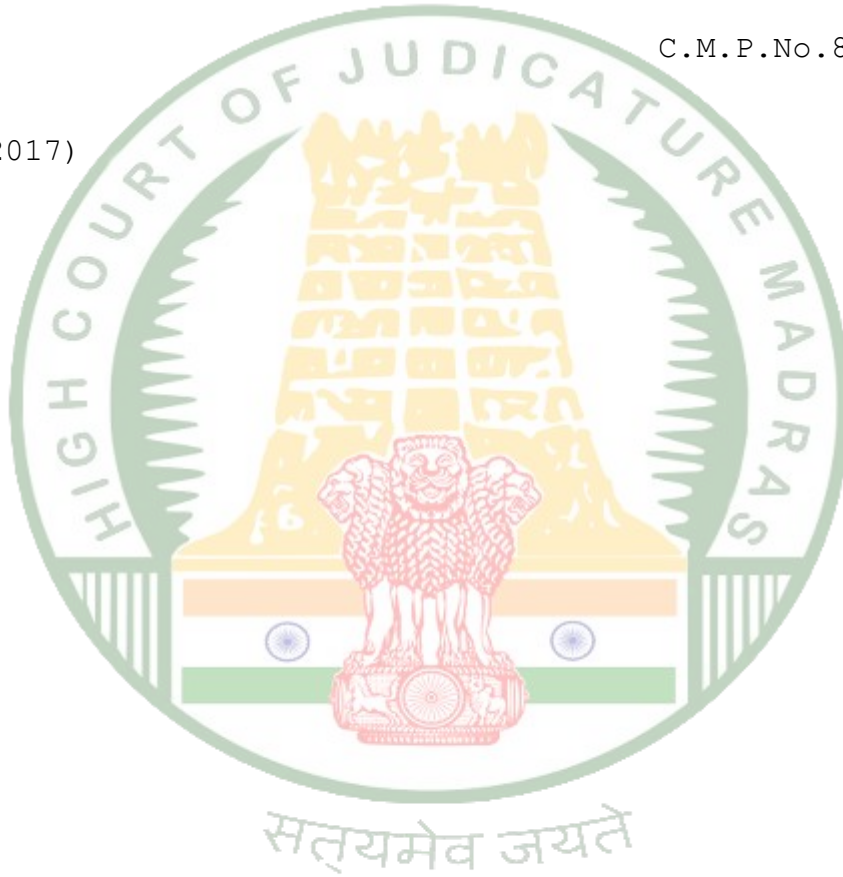
+lcc to M/s.Majestic Law Firm, Advocate, S.R.No.73688

C.M.A.No.1612 of 2017

and

C.M.P.No.8540 of 2017

GJ(CO)  
CA(06/11/2017)



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