

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

Coram

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

C.M.A.Nos.1700 & 1701 of 2017
and
C.M.P.No.9099 of 2017

Oumadevy

... Appellant in both
the Appeals

Vs

Thirugnanasambandam

... Respondent in
both the Appeals

Civil Miscellaneous Appeals preferred against the order and
decreetal order dated 30.08.2016 made in I.A.Nos.731 and 850 of
2014 in M.O.P.No.47 of 2013, by the Family Court, Puducherry.

For Appellant .. Mr.T.M.Naveen

For Respondent .. Mr.D.Senthilkumar
for N.Krishnamurthy

COMMON JUDGMENT

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

These Civil Miscellaneous Appeals are directed against the
orders passed in I.A.Nos.731 of 2014 and 850 of 2014 in
M.O.P.No.47 of 2013, on the file of the Family Court, at
Pondicherry.

2.The respondent herein, as petitioner, has filed
M.O.P.No.47 of 2013, on the file of the trial Court, praying to
pass a decree of dissolution of marriage, wherein, the present
appellant has been arrayed as sole respondent. During pendency
of the same, the appellant, as petitioner, has filed I.A.No.731
of 2014 and I.A.No.850 of 2014, under Section 24 of the Hindu
Marriage Act, 1955, praying to direct the respondent therein to
pay interim monthly maintenance to the petitioner and to her

younger daughter.

3.The trial Court, after considering the available evidence on record, has allowed I.A.No.731 of 2014 in part and thereby directed the respondent therein to pay a sum of Rs.5000/- per mensem as interim monthly maintenance. Likewise, the trial Court has partly allowed I.A.No.850 of 2014 and thereby directed the respondent therein to pay a sum of Rs.4000/- per mensem. Against the order passed in I.A.No.731 of 2014, C.M.A.No.1700 of 2017 and against the order passed in I.A.No.850 of 2014, C.M.A.No.1701 of 2014 have been filed.

4.The learned counsel appearing for the appellant in both the Civil Miscellaneous Appeals has contended to the effect that in both the I.As., the petitioner has claimed a sum of Rs.15,000/- per mensem as interim monthly maintenance to the petitioner and also to her younger daughter, but the trial Court, without considering the present cost of living, has meagerly granted Rs.5000/- and Rs.4000/- respectively. Under the said circumstances, for enhancement of interim monthly maintenance, these Civil Miscellaneous Appeals have been preferred.

5.Per contra, the learned counsel appearing for the respondent has contended to the effect that on the basis of available evidence on record, the trial Court has rightly allowed I.A.No.731 of 2014 in part and thereby directed the respondent to pay interim monthly maintenance to the tune of Rs.5000/-. Likewise the trial Court has rightly allowed I.A.No.850 of 2014 in part and thereby directed the respondent to pay a sum of Rs.4000/- as interim monthly maintenance and under such circumstances, the quantum of amounts fixed by the trial Court are not liable to be modified.

6.It is an admitted fact that M.O.P.No.47 of 2013 has been filed for getting the relief of dissolution of marriage, wherein, the present appellant has been shown as sole respondent.

7.It is also equally an admitted fact that during pendency of M.O.P.No.47 of 2013, I.A.No.731 of 2014 and I.A.No.850 of 2014 have been filed for getting interim monthly maintenance to the petitioner and to her younger daughter.

8.Before considering the quantum fixed in I.A.No.731 of 2014, the Court has to analyse the order passed in I.A.No.850 of 2014 by the trial Court.

9.As mentioned supra, I.A.No.850 of 2014 has also been filed under Section 24 of the Hindu Marriage Act, 1955, for directing the respondent therein to give interim monthly maintenance to the younger daughter of the petitioner and respondent.

10.It is an admitted fact that the provisions of Section 24 of the said Act is not applicable to children. Since the provisions of Section 24 of the said Act is not at all applicable to children, this Court is of the considered view that I.A.No.850 of 2014 is not legally maintainable and therefore, the impugned order passed by the trial Court is liable to be set aside and the petition filed in I.A.No.850 of 2014 is liable to be dismissed.

11.Now the Court has to analyse the quantum of interim monthly maintenance awarded in I.A.No.731 of 2014.

12.It is an admitted fact that the said petition has been filed by the wife of the respondent, as petitioner. It is also equally an admitted fact that in I.A.No.731 of 2014, Rs.15,000/- has been claimed. But the trial Court has given only a sum of Rs.5000/-.

13.The main contention put forth on the side of the appellant is that the amount granted in I.A.No.731 of 2014 by the trial Court is not at all sufficient to meet the barest needs of the appellant/petitioner.

14.It is a well known fact that by utilising a sum of Rs.5000/-, one cannot live comfortably now-a-days. Under the said circumstances, considering the present trend of life and also cost of barest needs and also considering that the younger daughter is under the care and custody of the petitioner, this Court is of the view that at least Rs.8000/- per mensem is required for maintaining the petitioner and her younger daughter. Under the said circumstances, the order passed in I.A.No.731 of 2014 is liable to be modified as indicated below:

In fine Civil Miscellaneous Appeal No.1700 of 2017 is allowed in part. The order passed in I.A.No.731 of 2014 by the trial Court is modified as follows:

The appellant/petitioner is entitled to get a sum of Rs.8000/- (Rupees Eight Thousand only) per mensem as interim monthly maintenance and to that extent I.A.No.731 of 2014 is allowed in part without costs. Connected miscellaneous petition is closed.

Civil Miscellaneous Appeal No.1701 of 2017 is dismissed without costs. As observed earlier, the petition filed in I.A.No.850 of 2014 is not legally maintainable and therefore, the order passed by the trial Court therein is set aside and the petition filed in I.A.No.850 of 2014 is dismissed without costs.

Considering the long pendency of M.O.P.No.47 of 2013, the trial Court is directed to dispose of the same before the end of January 2018 and report the same to the Registry without fail.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

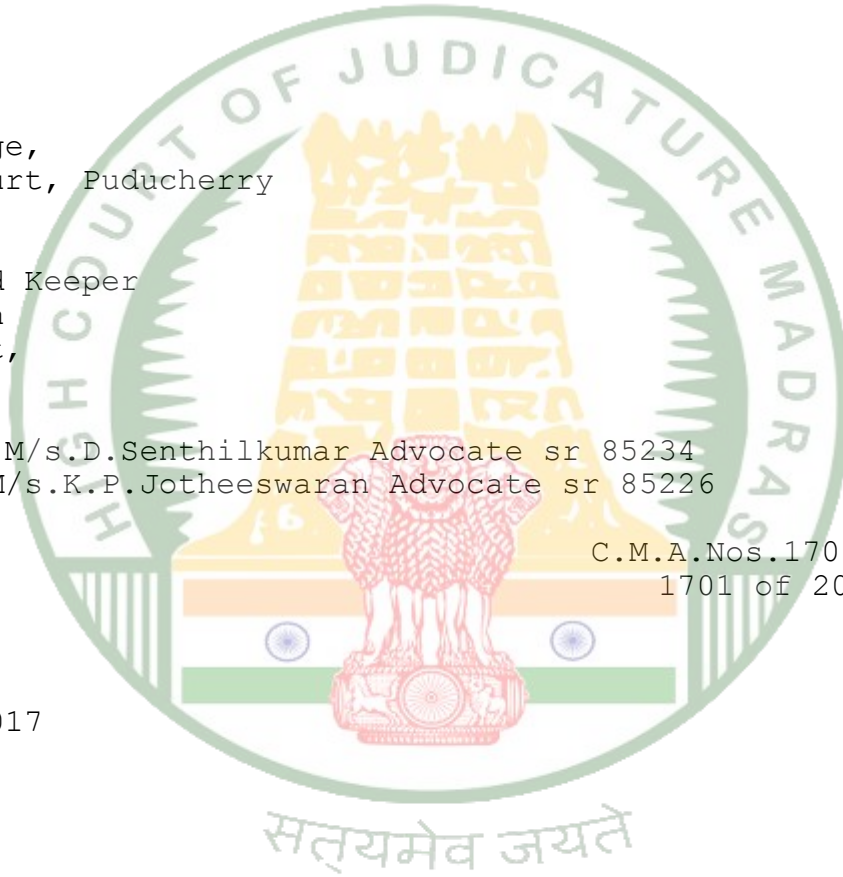
1.The Judge,
Family Court, Puducherry

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+3 ccs to M/s.D.Senthilkumar Advocate sr 85234
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1701 of 2017

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