

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE T.MATHIVANAN

CMA.NO.192/2017 & CMP.No.1279/2017

K.J.Johnson ... Appellant

Versus

1.Princi Johnson

2.Minor Jenitha Johnson

3.Minor J.Riya ... Respondents

**RR2 & 3 minors are represented
by their next friend and mother
Princi Johnson / 1st respondent herein.

Appeal filed under section 19 of the Family Court Act, 1988,
against the Fair and final order of the Family Court, Erode in
IA.No.697/2016 in IDOP No.8/2016 dated 22.11.2016.

For Appellant : Mr.S.Kaithaimalai Kumaran

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The respondent in IA.No.697/2016 in IDOP No.8/2016 on the
file of the Family Court, Erode, is the appellant herein.
Challenging the fair and decreetal order passed in
IA.No.697/2016 filed by the respondents herein under section 36
of the Indian Divorce Act, 1869, the appellant came forward to
prefer this present Civil Miscellaneous Appeal.

2 The marriage between the appellant and the 1st
respondent herein was solemnised on 12.02.2012 as per the
Christian Rituals and Customs at Erode and according to the
appellant, the 1st respondent started behaving abnormally and
later on, realised that she was not of normal mentality and the
1st respondent also started humiliating and never showed respect
to any of the members of the appellant's family and out of the

said wedlock, a child was born during April 2014. The appellant, unable to bear with the cruelty exhibited by the 1st respondent, filed a petition for divorce on the file of the learned Principal District Judge, Erode, in IDOP No.69/2012 for dissolution of marriage and obtained a decree for divorce on 04.06.2013. Thereafter, the relatives of the 1st respondent had approached the appellant and negotiated for re-union with the 1st respondent and accordingly, they got re-union and another child was born on 27.08.2014. However, the appellant found that the 1st respondent did not change her behaviour and continue to exhibit adamant attitude, not only to the petitioner but also to his family members and therefore, the appellant filed IDOP No.8/2016 u/s.10[x] of the Indian Divorce [Amended] Act, 51 of 2001, praying for dissolution of marriage which took place on 15.07.2013 between him and the 1st respondent. The 1st respondent and her minor son and daughter, pendency of the said petition, filed IA.No.697/2016, praying for interim maintenance at the rate of Rs.20,000/- per month and also a sum of Rs.15,000/- for meeting out the educational and other expenses for her two children and a sum of Rs.10,000/- towards litigation expenses. The appellant filed a counter to the said Interlocutory Application, stating among other things, though the appellant was running a business, it suffered loss and thereafter only, problem between him and the 1st respondent arose and the appellant is also maintaining his age old parents and he is also suffering due to illness and would further aver that the 1st respondent has also lodged a complaint against him on the file of the All Women Police Station, Erode, on 21.08.2015 and a compromise was also reached, wherein the 1st respondent has undertook to sustain herself with the income earned by her and as such, the petition seeking interim maintenance is not maintainable and prays for dismissal of the same.

3 The Family Court, Erode, after taking note of the averments made in the petition as well as in the counter affidavit, found that the 1st respondent is residing separately along with her two minor children and the appellant, being the husband of the 1st respondent and parent of the respondents 2 and 3, is bound to maintain them and it also had taken note of the pendency of the case filed under the provisions of the Domestic Violence Act and found that the appellant is capable of earning a sum of Rs.50,000/- to Rs.60,000/- per month out of his business and therefore, ordered payment of Rs.20,000/- per month by way of interim maintenance payable from the date of petition and Rs.10,000/- towards litigation expenses, vide impugned fair and decreetal order dated 22.11.2016 and challenging the legality of the same, the present appeal has been preferred.

4 Mr.S.Kaithaimalai Kumaran, learned counsel for the appellant would contend that admittedly, on an earlier occasion, the appellant had obtained a decree for divorce in IDOP No.69/2012 and at the intervention of the 1st respondent's relatives, there was a re-union and though he was running a business, it suffered a huge loss and on account of the same, he is unable to maintain even himself and that apart, he is also suffering due to some illness and is maintaining his age old parents and in any event, a sum of Rs.20,000/- per month awarded towards interim maintenance and Rs.10,000/- towards litigation expenses, is very much on the higher side and prays for interference.

5 This Court has carefully considered the submission made by the learned counsel appearing for the appellant and also perused the materials placed before us.

6 It is not in serious dispute as to the marital relationship between the appellant and the 1st respondent and so also the parentage of the respondents 2 and 3. it is the submission of the learned counsel appearing for the appellant that though the appellant was running a business, it suffered huge loss and on account of the same, he is finding it extremely difficult to maintain himself. However, the appellant did not file any documentary evidence to show that he has suffered loss and not even entered the witness box to sustain the same. Since he has admitted that he was running a business and suffered loss, the burden is on him to prove the same and on account of the said loss, he is unable to maintain the respondents. But, unfortunately, the appellant neither filed any documentary evidence nor gone into the box.

7 This Court also took a judicial notice of the fact that in view of the inflation rate, it is very difficult to maintain a family consisting of wife and two children and the children are aged about 6 and 2 ½ years respectively and they have to be maintained and educated. Therefore, awarding a sum of Rs.20,000/- per month by way of interim maintenance to the 1st respondent and a sum of Rs.10,000/- towards litigation expenses, cannot be said to be on higher side. This Court, on an independent application of mind, finds no error or infirmity in the reasons assigned in the impugned order, awarding interim maintenance and find no merits in the appeal.

8 Accordingly, the Civil Miscellaneous Appeal is dismissed at the admission stage itself, confirming the fair and decretal order dated 22.11.2016 made in IA.No.697/2016 in IDOP No.8/2016 on the file of the Family Court, Erode. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

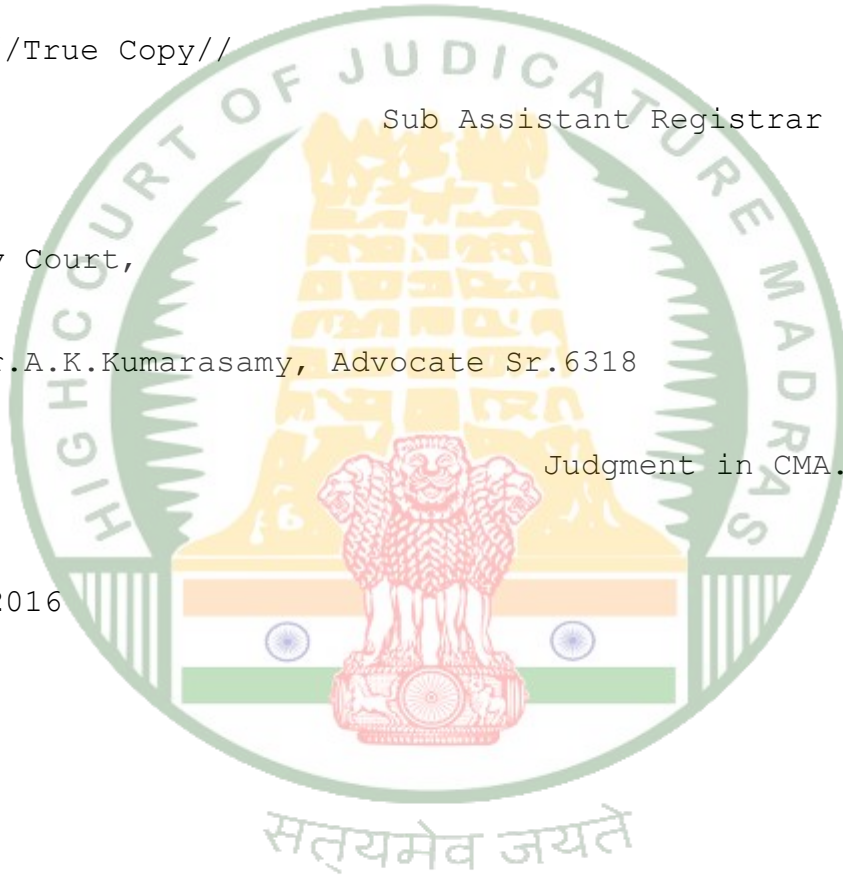
To

The Family Court,
Erode.

+lcc to Mr.A.K.Kumarasamy, Advocate Sr.6318

Judgment in CMA.No.192/2017

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