

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4257 & 4262 of 2012
& M.P.No.1 & 1 of 2012

C.Nagarajan	.. Petitioner
	in C.R.P.No.4257/2012
M.Vennila	.. Petitioner
	in C.R.P.No.4262/2012
	Vs.
M.Vennila	.. Respondent
	in C.R.P.No.4257/2012
C.Nagarajan	.. Respondent
	in C.R.P.No.4262/2012

PRAYER in both the C.R.Ps': Civil Revision Petitions filed Under Article 227 of the Constitution of India, against the fair and decretal order dated 06.07.2012, made in I.A.No.84 of 2010 in H.M.O.P.No.60 of 2009, on the file of the Principal Subordinate Judge, Krishnagiri.

(In C.R.P.(PD)No.4257/2012)

For Petitioner	: Mr.V.Rameshvel
For Respondent	: Mr.J.Hariharan
	for Mr.V.Nicholas

(In C.R.P.(PD)No.4262/2012)

For Petitioner	: Mr.J.Hariharan
	for Mr.V.Nicholas
For Respondent	: Mr.V.Ramesh Vel

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal order dated 06.07.2012, made in I.A.No.84 of 2010 in H.M.O.P.No.60 of 2009, on the file of the Principal Subordinate Judge, Krishnagiri.

2. The issues and parties involved in both the civil revision petitions are one and the same, therefore both the civil revision petitions are disposed of by this common order.

3. The petitioner and respondent in C.R.P(PD)No.4257/2012 are the petitioner and respondent in H.M.O.P.No.60 of 2009, on the file of the Subordinate Judge, Krishnagiri. The petitioner filed H.M.O.P.No.60 of 2009, for divorce against the respondent. The respondent filed counter statement and is contesting the H.M.O.P. Pending H.M.O.P., she filed I.A.No.84 of 2010 for interim maintenance. According to the respondent, her husband, who is working as a Village Administrative Officer is earning good salary and has got arrears and bonus. He is not maintaining herself and her minor son and also not providing any money. Therefore, she

claimed a sum of Rs.3,000/- for livelihood, a sum of Rs.15,000/- for herself and for her son and a sum of Rs.5,000/-, towards litigation expenses. She made various allegations against the petitioner herein.

4. The petitioner filed counter affidavit on 04.02.2011 and denied various allegations made by the petitioner, especially the averments with regard to his salary. The petitioner submitted that the respondent and her minor son has already filed M.C.No.14 of 2010, on the file of the Chief Judicial Magistrate, Krishnagiri and the same is pending. He also made allegations against the respondent.

5. The learned Judge, considering the Section 24 of the Hindu Marriage Act and the fact that the respondent has already filed petition for maintenance before Chief Judicial Magistrate, Krishnagiri, awarded only a sum of Rs.1,500/- towards litigation expenses.

6. Against the said order dated 06.07.2012, made in I.A.No.84 of 2010 in H.M.O.P.No.60 of 2009, the C.R.P.(PD).No.4257/2012 is filed by the husband and

C.R.P(PD).No.4262/2012 is filed by the wife.

7. The learned counsel appearing for the petitioner husband submitted that in both the civil revision petitions, the learned Judge erred in awarding a sum of Rs.1,500/- per month towards litigation expenses. The wife has claimed only a sum of Rs.5,000/- towards litigation expenses and submitted that the said order in fact amounts to awarding interim maintenance. In M.C.No.14 of 2010 filed by the wife, the Chief Judicial Magistrate awarded a sum of Rs.2,500/- per month to the wife and a sum of Rs.5,000/- to the minor son. Therefore, the petitioner husband prayed for setting aside the impugned order. In support of his contention, the learned counsel appearing for the petitioner relied on the judgments: **(1990) TLNJ 421 (Vanaja Vs. Gopu)** and **(2009) 7 MLJ 1050 (Amutha @ Symaladevi V. K.Thirumoorthy @ Thirumalaisamy)**

8. The learned counsel appearing for the wife submitted that the application for interim maintenance filed under Section 24 of the Hindu Marriage Act is independent of the petition under Section 125 of the Criminal Procedure Code and wife is entitled to claim

maintenance under both the provisions. The learned Judge is not correct in dismissing the application filed under Section 24 of the Hindu Marriage Act, in view of the pendency of maintenance of M.C.No.14 of 2010. The contention of the learned counsel appearing for the wife is that the pendency of the petition before Chief Judicial Magistrate is not a bar for the learned Judge to consider the petition for maintenance under Section 24 of the Hindu Marriage Act.

9. Heard the learned counsel appearing for the petitioners and respondents and perused the materials available on record and judgments relied on by the petitioner husband.

10. The learned Judge, held that I.A.No.84 of 2010 filed for interim maintenance under Section 24 of Hindu Marriage Act is not maintainable, on the ground that M.C.No.14 of 2010 filed by the wife is pending. This conclusion is contrary to the well settled judicial pronouncement. The petition, under both Section 24 of Hindu Marriage Act and Section 125 of Criminal Procedure Code, can be maintained by parties and both can be considered and decided simultaneously. The Only condition is that maintenance awarded in one application must be taken into account, while

awarding maintenance in other application. If maintenance awarded in one application is reasonable and sufficient for maintenance of the spouse, no maintenance need be granted in other application. If the maintenance awarded in one application is not sufficient for the maintenance of the spouse and minor child, the Court can award further reasonable amount in other application. In the present civil revision petition, application in I.A.No.84 of 2010, filed under Section 24 of the Hindu Marriage Act was heard. M.C.No.14 of 2010 filed by wife was pending. Now, it is represented that a sum of Rs.2,500/- per month and a sum of Rs. 5,000/- per month to the son had been ordered to be paid in M.C.No.14 of 2010, filed by the wife.

11. Considering all the materials on record in entirety, I hold that the amount awarded in M.C.No.14 of 2010 is a reasonable amount and no further amount need be ordered to be paid in application in I.A.No.84 of 2010, filed under Section 24 of the Hindu Marriage Act.

12. The learned Judge committed an irregularity in ordering Rs.1,500/- per month towards litigation expenses. The said order is

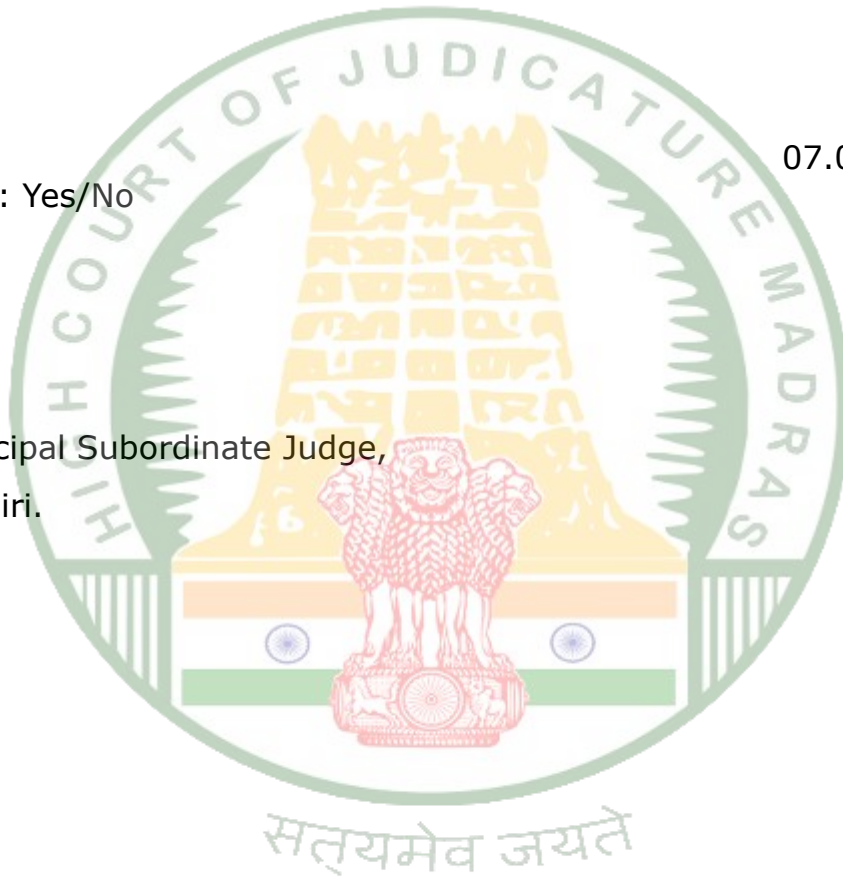
set aside and modified to the effect that a total sum of Rs.5,000/- is ordered towards litigation expenses. In view of the above modification, both the civil revision petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No
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To

The Principal Subordinate Judge,
Krishnagiri.

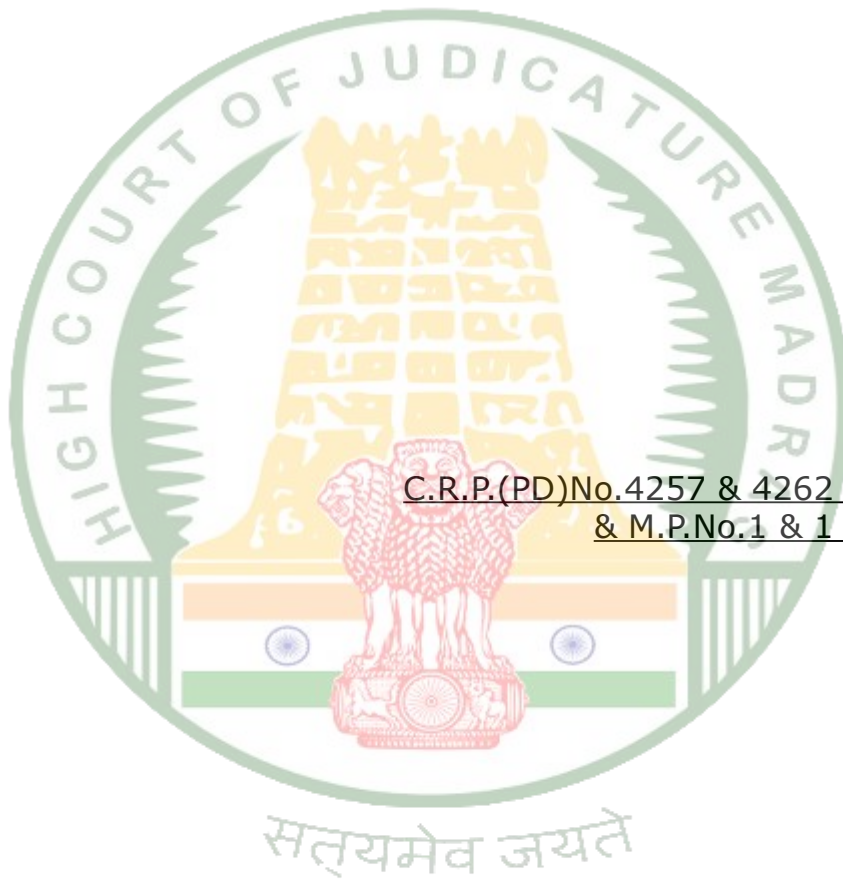
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V.M.VELUMANI, J.

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