



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2017

CORAM :

WEB COPY

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

C.M.A. (MD) No.1096 of 2017

and

C.M.P. (MD) No.11181 of 2017

Merlin Aby

... Appellant/Petitioner

**Vs.**

Rachal

... Respondent/Respondent

**Prayer:** Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act, 1869, to set aside the fair and decretal order dated 09.02.2016 made in D.O.P.No.225 of 2013 on the file of the District Judge, Kanyakumari at Nagercoil.

For Appellant : Mr.M.R.Sreenivasan

For Respondent : Mr.T.Selvakumaran

**JUDGMENT**

Heard the learned counsel for the parties.

2.The appellant is the husband. He got married to the respondent on 23.02.2006. Two children have been born of the wedlock. Eldest one is with the appellant while the younger one is with the respondent. The allegation of the appellant is that the respondent is suffering from a serious unsoundness of mind. He therefore filed D.O.P.No.225 of 2013 before the District Judge, Kanyakumari District at Nagercoil.

3.An application in I.A.No.107 of 2015 was filed by the wife for payment of interim alimony and for litigation expenses. The said I.A. was disposed of on 22.12.2015. The appellant did not comply with the order passed in the said I.A. Since the interim order passed by the trial Court for payment of interim alimony was not complied with D.O.P.No.225 of 2013 was rightly struck off. The right to prosecute a litigation can be denied if the order passed by the Court with regard to the payment of maintenance is not complied with. Therefore, the order passed by the learned trial Judge on 09.02.2016 dismissing D.O.P.No.225 of 2013 cannot be faulted.

4.The learned counsel for the appellant now submits that the appellant shall deposit the entire arrears on or before 28.02.2018. He has also given an undertaking that the order made in I.A.No.107 of 2015 would be complied with till the disposal of D.O.P.No.225 of



2013.

5. Recording the said submission, the order dated 09.02.2016 dismissing D.O.P.No.225 of 2013 is set aside. D.O.P.No.225 of 2013 shall be restored to the file of the District Judge, Kanyakumari District at Nagercoil, on proof of compliance of the order made in I.A.No.107 of 2015 on or before 28.06.2018.

6. This civil miscellaneous appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

**To**

The District Judge,  
Kanyakumari at Nagercoil.

+ 1 CC TO Mr.M.R.SREENIVASAN, ADVOCATE IN SR No. 91582

+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 91637

SKM

TE/JC/SAR-4 : 22/05/2018 : 2P/4C

C.M.A. (MD) No.1096 of 2017  
07.12.2017