

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 23.02.2018
Coram

The Hon'ble Mr. Justice R. Subbiah
and
The Hon'ble Mr. Justice P. D. Audikesavalu

C.M.A.No.1193 of 2014

P. Arumugham ...Appellant/Petitioner/petitioner

P. Radha Vs.
...Respondent/Respondent/Respondent

Civil Miscellaneous Appeal filed against the fair and decreetal orders, dated 17.04.2006, passed in I.A.No. (unnumbered) of 2004, in F.C.O.P.No.183 of 2004, on the file of the Family Court, Salem.

For Appellant : Mr.S.Doraisamy, Senior Counsel
for M/s. Muthumani Doraisami

For Respondent : Mr.D.Shivakumaran

JUDGMENT

(Order of the Court was delivered by R.Subbiah,J.)

The husband is the appellant herein. He initiated proceedings for divorce in F.C.O.P.No.183 of 2004, on the file of the Family Court, Salem, in which, the respondent filed an Application seeking interim maintenance. The said Application was allowed in favour of the respondent and the petitioner was directed to pay certain amounts towards interim maintenance. Though the appellant continued to pay the interim maintenance amount initially, subsequently, it appears that the petitioner has not paid the same. Hence, the Court below dismissed the Petition in F.C.O.P.No.183 of 2004 for dissolution of marriage, holding that the petitioner is not entitled to prosecute the Petition. Seeking restoration of the F.C.O.P.No.183 of 2004, the petitioner filed an Interlocutory Application. However, the Court below, by the impugned order, dated 17.04.2006 rejected the Interlocutory Application as not maintainable. Challenging the said order, the present Civil Miscellaneous Appeal is filed by the appellant/husband.

2. The learned Senior Counsel appearing for the appellant has submitted that the main ground, on which, the Petition for Divorce as well as Interlocutory Application were

dismissed/rejected is on account of non payment of maintenance amount to the respondent/wife. Therefore, the learned Senior Counsel submitted that, the appellant/husband is ready and willing to pay a sum of Rs.90,000/- to the respondent/wife, and prays for setting aside the impugned order, thereby, directing the Court below to take up the F.C.O.P. on its file and dispose of the same at the earliest. The learned Senior Counsel for the appellant also handed over the said amount (i.e. Rs.90,000/-) to the learned counsel appearing on behalf of the respondent/wife across the bar. On receipt of the said amount and in reply to the above submission, the learned counsel appearing for the respondent/wife submitted that the amount, viz., Rs.90,000/- paid by the appellant/husband is only a partial payment towards the maintenance amount, and the appellant is yet to pay the balance amount. Therefore, the learned counsel submitted that the respondent is agreeable for setting aside the impugned order, provided, the appellant/husband should pay the balance amount before the Court below within a time, that may be stipulated by this Court.

3. In the light of the above consensus arrived at between the parties, this Court, without traversing into merits of the matter, is inclined to allow this Civil Miscellaneous Appeal.

4. Accordingly, this Civil Miscellaneous Appeal is allowed, the order passed in unnumbered Interlocutory Application of 2004, in F.C.O.P.No.183 of 2004 is set aside, and the Family Court, Salem, is directed to restore the F.C.O.P. No.183 of 2004, on its file and dispose of the same as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of this order. So far as the balance amount payable by the appellant/husband to the respondent/wife is concerned, the same shall be calculated and paid by the appellant before the Family Court, Salem, within a period of one month from the date on which, the F.C.O.P. was taken on the file of the Family Court, Salem. No costs.

5. This Civil Miscellaneous Appeal is allowed, on the terms, as indicated above.

Sd/-
Assistant Registrar (CS III)
//True Copy//

Sub Assistant Registrar

sd

To

The Judge,
Family Court, Salem.

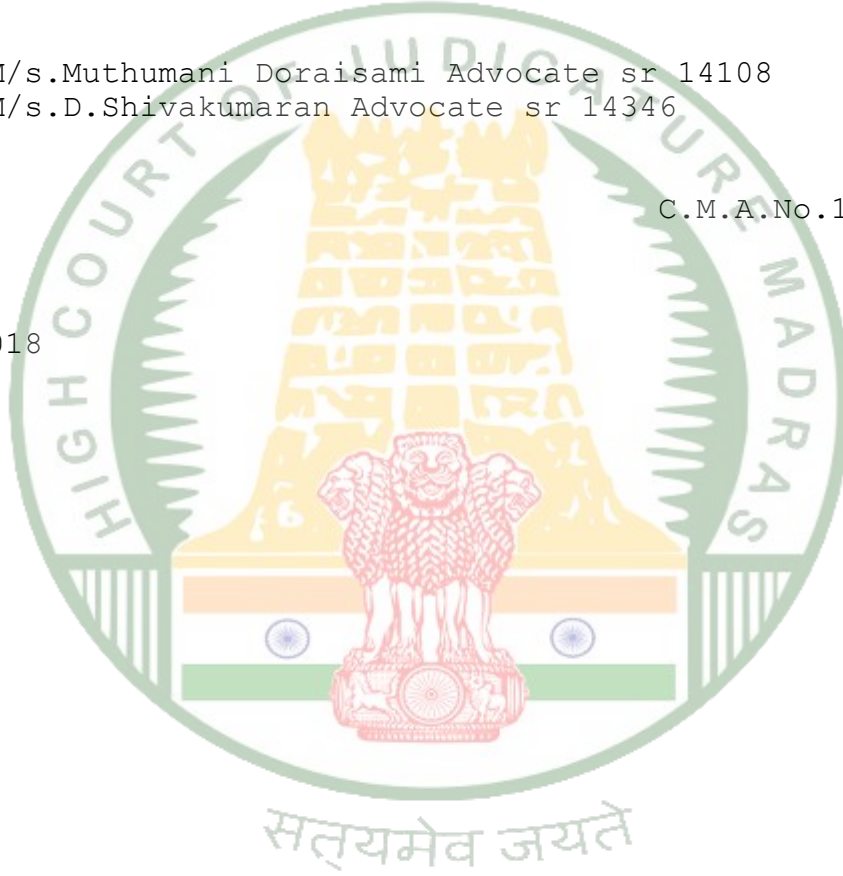
copy to

The Section Officer
VR Section
High Court, Madras

+1 cc to M/s.Muthumani Doraisami Advocate sr 14108
+1 cc to M/s.D.Shivakumaran Advocate sr 14346

C.M.A.No.1193 of 2014

aa12/04/2018



WEB COPY