

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.01.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM

AND

THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.1647 of 2017

and C.M.A.No.5 of 2018

and

C.M.P.No.8751 of 2017 in C.M.A.No.1647 of 2017

P.C.Sakthivel ... Appellant in CMA.1647/17
... and Respondent in CMA.5/18

Vs

M.Sangamithrai ... Respondent in CMA.1647/17
... and Appellant in CMA.5/18

Common Prayer : Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act, 1984, against the order dated 18.04.2017 passed by the Family Court, Erode, in I.A.No.348 of 2016 in H.M.O.P.No.289 of 2015.

For Appellant in CMA.1647/17 : Ms.P.Rajathi
& For Respondent in CMA.5/18 for Mr.C.Veeraraghavan

For Respondent in CMA.1647/17 : Mr.P.Valliappan
& For Appellant in CMA.5/18

COMMON JUDGMENT

[Judgment of the Court was delivered by A.SELVAM., J.]

These Civil Miscellaneous Appeals are directed against the order dated 18.04.2017 passed in I.A.No.348 of 2016 in H.M.O.P.No.289 of 2015 by the Family Court, Erode.

2.The appellant herein in C.M.A.No.5 of 2018, as petitioner, has filed H.M.O.P.No.289 of 2015, praying to pass a decree of annulment of marriage, wherein, the present respondent has been shown as sole respondent. During pendency of the same, the appellant, as petitioner, has filed I.A.No.348 of 2016 under

Section 24 of the Hindu Marriage Act, 1955, praying to direct the respondent to pay interim monthly maintenance of Rs.1,00,000/- and also litigation expenses to the tune of Rs.1,00,000/-.

3.The trial Court, after considering the available evidence on record, has partly allowed I.A.No.348 of 2016, whereby, directed the respondent therein to pay interim monthly maintenance to the tune of Rs.25,000/- and rejected litigation expenses. Against the order passed by the trial Court, C.M.A.No.5 of 2018 has been filed by the petitioner, as appellant and for the purpose of setting aside the order passed by the trial Court, the respondent, as appellant, has filed C.M.A.No.1647 of 2017.

4.The learned counsel appearing for the appellant/petitioner in C.M.A.No.5 of 2018 has contended to the effect that the respondent is possessed of various extensive properties worth of Rs.41 Crores and further, the respondent is getting monthly rental of Rs.2,00,000/- and to that effect, relevant documents have been filed and the trial Court, without considering the documents filed on the side of the appellant/petitioner, has erroneously allowed a meager sum of Rs.25,000/- towards interim monthly maintenance and also erroneously rejected litigation expenses and therefore, the order passed by the trial Court is liable to be modified.

5.Per contra, the learned counsel appearing for the appellant in C.M.A.No.1647 of 2017 has also equally contended to the effect that the appellant/respondent is not having sufficient means to pay the quantum of interim monthly maintenance fixed by the trial Court and therefore, the order passed in I.A.No.348 of 2016 is liable to be set aside.

6.It is an admitted fact that the appellant, as petitioner in C.M.A.No.5 of 2018, has filed H.M.O.P.No.289 of 2015 praying to pass a decree of annulment of marriage and during pendency of the same, I.A.No.348 of 2016 has been filed under Section 24 of the Hindu Marriage Act, 1955, praying to pass an order with regard to interim monthly maintenance and also litigation expenses.

7.On the side of the petitioner, certain documents have been filed for the purpose of proving that the respondent is owning extensive immovable properties.

8.The trial Court, after considering the documents filed on the side of the petitioner, has allowed a sum of Rs.25,000/- towards interim monthly maintenance, but rejected litigation expenses.

9.Considering the present trend of life and also considering the fact that both the petitioner and respondent has not been blessed with any issue, the quantum of interim monthly

maintenance fixed by the trial Court is just and reasonable and no modification is required with regard to that aspect.

10.As rightly pointed out on the side of the petitioner, the trial Court has not awarded anything with regard to litigation expenses.

11.Considering the fact that under Section 24 of the Hindu Marriage Act, 1955, litigation expenses can also be provided on the basis of given circumstances.

12.In the instant case, it has not been positively established on the side of the respondent that the petitioner is having sufficient means to pay litigation expenses.

13.Considering the above said factual aspect, this Court is of the view that a sum of Rs.10,000/- can be granted as litigation expenses.

14.With the above modification, C.M.A.No.5 of 2018 is liable to be allowed and C.M.A.No.1647 of 2017 is liable to be dismissed.

In fine, C.M.A.No.5 of 2018 is allowed in part without cost. The order passed by the trial Court is modified as follows:

The respondent is directed to pay litigation expenses of Rs.10,000/-. In other aspect, there is no modification. C.M.A.No.1647 of 2017 is dismissed without costs. The trial court is directed to dispose of H.M.O.P.No.289 of 2015 before the end of March 2018 and report the same to the Registry without fail.

No costs. Connected Miscellaneous Petition also dismissed.

-s/d-

सत्यमेव जयते
Assistant Registrar

True Copy

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Sub-Assistant Registrar

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To

1 The Judge
The Family Court,
Erode.

2 The Posting Clerk
Judicial Department, High Court, Madras-101.

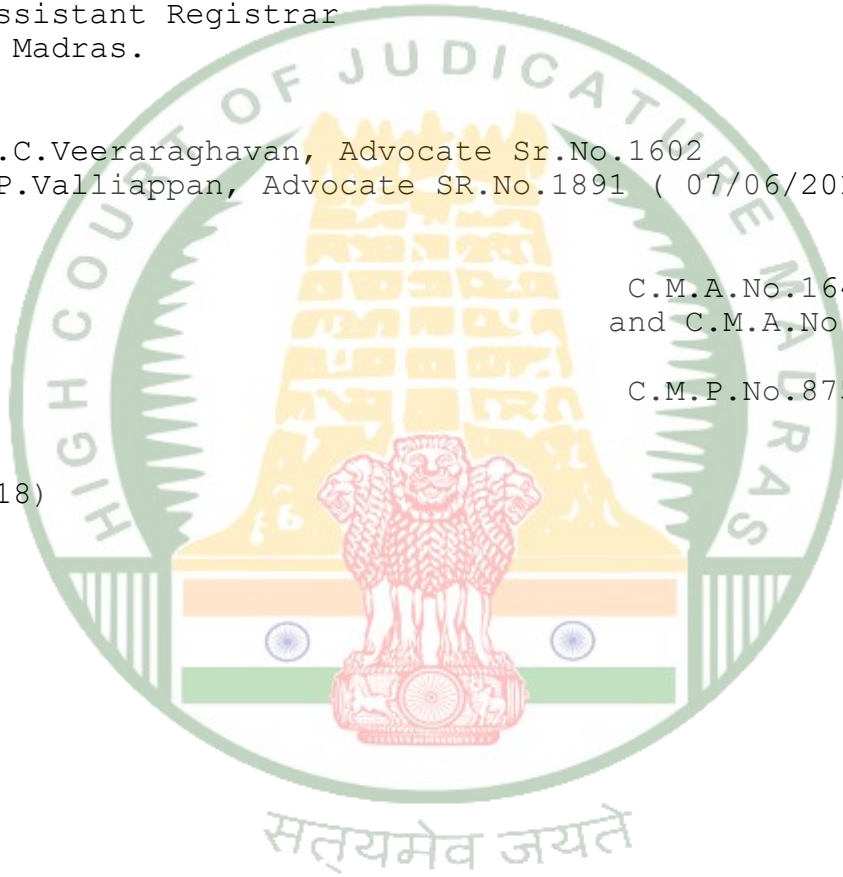
3 The Record Keeper
VR Section, High Court, Madras-101.

4 The Sub Assistant Registrar
High Court, Madras.

+1 CC to Mr.C.Veeraraghavan, Advocate Sr.No.1602
+2cc to Mr.P.Valliappan, Advocate SR.No.1891 (07/06/2018)

C.M.A.No.1647 of 2017
and C.M.A.No.5 of 2018
and
C.M.P.No.8751 of 2017

SJ(CO)
KP(03/02/2018)



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