

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.01.2018

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2 of 2018
and C.M.P.No.38 of 2018
and

C.M.A.No.3 of 2018
and C.M.P.No.39 of 2018

R.Sanjeevi .. Appellant in both CMAs/Respondent

Vs.

J.Vinodha .. Respondent in both CMAs/Petitioner

C.M.A.No.2 of 2018 : Civil Miscellaneous Appeal preferred under Section 28 of the Hindu Marriage Act, 1955 r/w Section 19 of the Family Courts Act, 1984 to set aside the fair and decreetal order dated 30.11.2017 made in I.A.No.2447 of 2016 in O.P.No.439 of 2016 on the file of the VI Additional Family Court, Chennai.

C.M.A.No.3 of 2018 : Civil Miscellaneous Appeal preferred under Section 28 of the Hindu Marriage Act, 1955 r/w Section 19 of the Family Courts Act, 1984 to set aside the fair and decreetal order dated 30.11.2017 made in I.A.No.2448 of 2016 in O.P.No.439 of 2016 on the file of the VI Additional Family Court, Chennai.

For Appellant : Mr.S.Senthilnathan
in both CMAs

For Respondent : Mr.R.Bharath Kumar
in both CMAs

COMMON JUDGMENT

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

These Civil Miscellaneous Appeals are directed against the common order dated 30.11.2017, passed in I.A.No.2447 of 2016 and I.A.No.2448 of 2016 in O.P.No.439 of 2016, by the VI Additional Family Court at Chennai.

2.The appellant herein, as petitioner, has filed O.P.No.439 of 2016 on the file of the trial Court, for getting a decree of divorce, wherein, the present respondent has been shown as sole respondent. During pendency of the same, the respondent, as petitioner, has filed I.A.No.2447 of 2016 for getting litigation expenses. Likewise, she filed I.A.No.2448 of 2016 for getting interim monthly maintenance.

3.The trial Court, after considering the available evidence on record, has partly allowed I.A.No.2447 of 2016 and thereby, directed the respondent therein to pay a sum of Rs.25,000/- towards litigation expenses. Likewise, partly allowed I.A.No.2448 of 2016 and directed the respondent to pay a sum of Rs.15,000/- per mensem towards interim monthly maintenance, by way of passing a common order and the same is being challenged in the present Civil Miscellaneous Appeals.

4.The learned counsel appearing for the appellant/respondent has contended to the effect that the appellant/respondent is an agriculturist and his annual income is Rs.1,80,000/-and to that effect, Income Certificate has been marked as Ex.R4 and the trial Court, without considering Ex.R4, has erroneously directed the appellant/ respondent to pay a sum of Rs.15,000/- per mensem as interim monthly maintenance and further, the respondent is a practising advocate and she can meet out litigation expenses. Under the said circumstances, the quantum of amount fixed by the trial Court as litigation expenses is also exorbitant and the same is also liable to be modified.

5.Per contra, the learned counsel appearing for the respondent contended to the effect that the appellant/respondent has been doing money lending business and thereby, earning huge amounts. Under the said circumstances, the quantum of amounts fixed as litigation expenses and also interim monthly maintenance by the trial Court are reasonable and the same are not liable to be modified.

6.It is an admitted fact that the appellant/respondent, as petitioner, has filed O.P.No.439 of 2016 on the file of the trial Court, for getting a decree of divorce.

7.The main contention put forth on the side of the appellant/ respondent is that the appellant/respondent is an agriculturist and his annual income is Rs.1,80,000/-. But, the trial Court has directed the appellant/respondent to pay a sum of Rs.15,000/- towards interim monthly maintenance. On the side of the appellant/respondent, Ex.R4 has been filed, wherein, it has been clinchingly stated to the effect that the

appellant/respondent is getting annual income of Rs.1,80,000/- and therefore, his average monthly income is Rs.15,000/-.

8. Even though on the side of the respondent/petitioner, a fine attempt has been made to the effect that the appellant/respondent has been doing money lending business, no document has been filed for the purpose of proving the said aspect. Considering the fact that the average monthly income of the respondent is Rs.15,000/-, this Court is of the view that the quantum of amount fixed by the trial Court towards interim monthly maintenance is excessive. Under the said circumstances, the said amount is liable to be modified.

9. Considering the present trend of life and also considering the monthly income of the appellant/respondent, Rs.10,000/- per mensem would be sufficient to meet out the bareable needs of the respondent/petitioner.

10. Now, the Court has to look into the contention put forth on the side of the appellant/respondent with regard to litigation expenses.

11. It is an admitted fact that the trial Court has directed the appellant/respondent to pay a sum of Rs.25,000/- towards litigation expenses.

12. On the side of the appellant/respondent, an attempt has been made to the effect that the respondent/petitioner is a practising advocate and thereby, earning huge amounts to meet out litigation expenses. For the purpose of proving the said aspect, there is no document.

13. Considering the fact that on the side of the appellant/ respondent, no relevant document has been filed for the purpose of knowing the monthly income of the respondent/petitioner, the contention put forth on the side of the appellant/respondent with regard to litigation expenses cannot be accepted.

In fine, C.M.A.No.2 of 2018 is dismissed without costs. The order passed in I.A.No.2447 of 2016 by the trial Court is confirmed.

C.M.A.No.3 of 2018 is allowed in part. The order passed in I.A.No.2448 of 2016 by the trial Court is modified as follows:

The appellant/respondent is directed to pay a sum of Rs.10,000/- per mensem as interim monthly maintenance. The trial Court is directed to dispose of O.P.No.439 of 2016 and O.P.No.3070 of 2017 before the end of February 2018 and report the same to the Registry without fail.

No costs. C.M.P.No.38 of 2018 is dismissed. C.M.P.No.39 of 2018 is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

gya

To

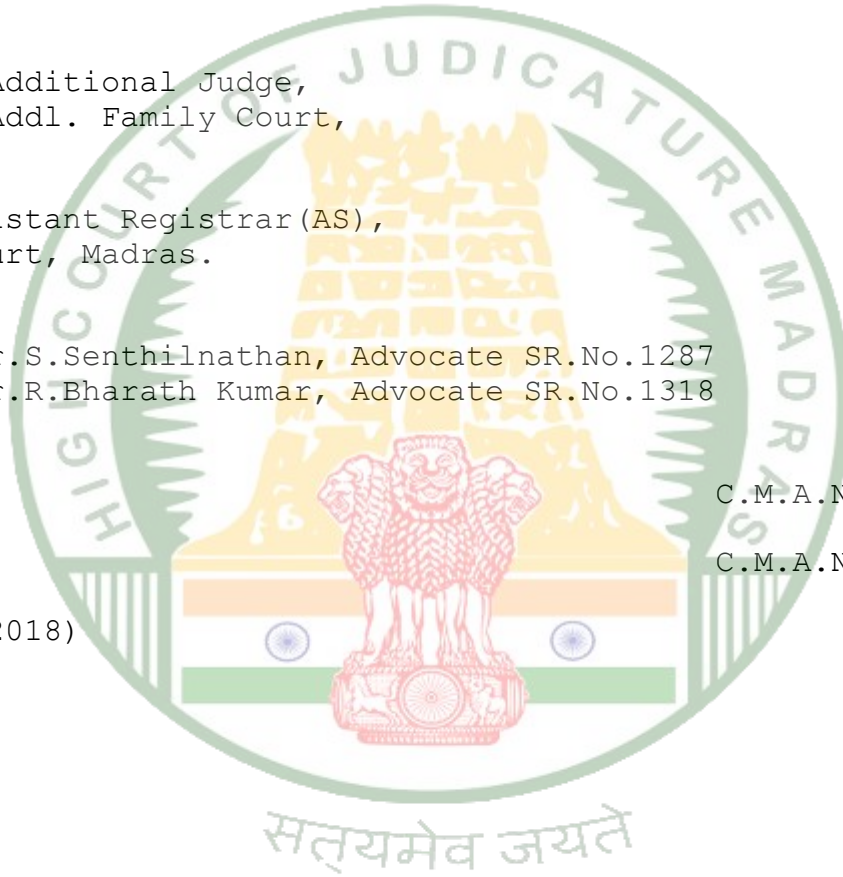
1.The VI Additional Judge,
The VI Addl. Family Court,
Chennai.

2.The Assistant Registrar(AS),
High Court, Madras.

+2cc to Mr.S.Senthilnathan, Advocate SR.No.1287
+1cc to Mr.R.Bharath Kumar, Advocate SR.No.1318

EV(CO)
GN(02/02/2018)

C.M.A.No.2 of 2018
and
C.M.A.No.3 of 2018



WEB COPY