

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.03.2018**

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.443 of 2018
& CMP No.3832 of 2018

R.Balathandayuthapani ... Appellant

Vs

D.Premalatha Respondent

Prayer:- Civil Miscellaneous Appeal filed against the order dated 16.05.2017, passed by the Additional Family Court at Chennai, in I.A.No.1553 of 2016 in O.P.No.4823 of 2015.

For Appellant : Mr.N.E.A.Dinesh

For Respondent : Mr.V.K.Sathiyamoorthy

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM,J.**)

This Civil Miscellaneous Appeal has been directed against the order dated 16.05.2017, passed in I.A.No.1553 of 2016 in O.P.No.4823 of 2015, by the family Court at Chennai.

2.The appellant herein, as petitioner, has filed

O.P.No.4823 of 2015, on the file of the trial Court, for getting a decree of divorce, wherein, the present respondent has been shown as sole respondent.

3.During pendency of the same, the respondent, as petitioner, has filed I.A.No.1553 of 2016, under Section 24 of the Hindu Marriage Act, 1955, praying to pass an order of interim monthly maintenance to the petitioner and to her child and also litigation expenses.

4.The trial Court, after considering the available evidence on record, has directed the respondent therein to pay interim monthly maintenance of Rs.20,000/- to the petitioner and Rs.10,000/- to the child and also Rs.10,000/- towards litigation expenses, by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

5.The learned counsel appearing for the appellant/respondent has contended to the effect that the appellant has been drawing a monthly salary of Rs.60,000/- and he has to maintain his age old mother and also widowed sister and under the said circumstances, the quantum of amounts awarded by the trial Court are excessive and therefore, the impugned order passed by the trial Court is liable to be modified.

6.Per contra, the learned counsel appearing for the respondent has contended to the effect that even though as per order passed in I.A.No.1553 of 2016, an Execution Petition is pending, so far no amount has been deposited by the appellant and further, the trial Court, after considering the overall situation available in the present case, has rightly passed the impugned order and the same does not require any interference.

7.It is an admitted fact that the appellant, as petitioner, has filed O.P.No.4823 of 2015 on the file of the trial Court for getting a decree of divorce, wherein, the present respondent has been shown as sole respondent. It is also equally an admitted fact that during pendency of O.P.No.4823 of 2015, the respondent, as petitioner, has filed I.A.No.1553 of 2016, under Section 24 of the Hindu Marriage Act, 1955.

8.The trial Court, after considering the available evidence on record, has directed the respondent therein to pay an interim monthly maintenance of Rs.20,000/- to the petitioner and Rs.10,000/- to the child and also Rs.10,000/- towards litigation expenses.

9.The main grievance expressed on the side of the appellant is that the amounts awarded by the trial Court are excessive.

10. Considering the quantum of monthly salary of the appellant and also considering the fact that the child of both the appellant and respondent is now under the care and custody of the respondent/petitioner, this Court is of the view that Rs.5000/- would be sufficient so as to maintain the child of the appellant and respondent. In other aspects, the amounts awarded by the trial Court are just and reasonable. With the aforesaid modification, this Civil Miscellaneous Appeal is liable to be allowed in part.

In fine, this Civil Miscellaneous Appeal is allowed in part without costs. The order passed in I.A.No.1553 of 2016 in O.P.No.4823 of 2015 is modified as follows:

The appellant/respondent is directed to pay an interim monthly maintenance of Rs.5000/- (Rupees Five Thousand only) to the child. In other aspects, there is no modification.

Connected miscellaneous petition is closed.

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(A.S.J.,) (P.K.J.)

01.03.2018

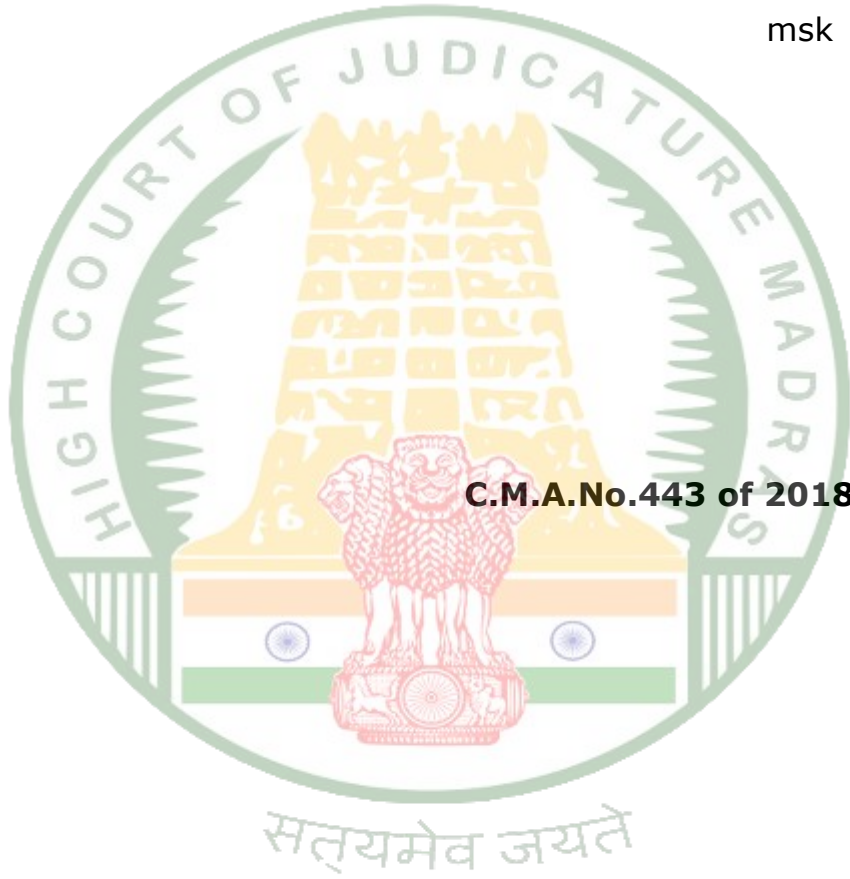
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A.SELVAM,J.

and

P.KALAIYARASAN,J.

msk



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