

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.Nos.246 & 289 of 2004

CMP.No.1233 of 2004 in CMA.No.289 of 2004

Suresh Pillai

.... Appellant/Respondent  
in both CMAs

-Vs-

Lalitha

.... Respondent/Petitioner  
in both CMAs

Prayer in CMA.No.246 of 2004: Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act, 1955, against the fair and decretal order of the learned Subordinate Judge, Cuddalore in O.P.No.99 of 1997 dated 16.10.2001.

Prayer in CMA.No.289 of 2004: Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act, against the fair and decretal order of the learned Subordinate Judge, Cuddalore in I.A.No.2 of 2002 in O.P.No.99 of 1997 dated 24.04.2003.

For Petitioner : Mr.D.Kanagasundaram

For Respondent : Ms.Meenal

ORDER

The appellant herein has come out with twin appeals, one challenging the exparte order granting divorce to the respondent-wife (CMA.No.246 of 2004) and another appeal against the order dismissing his application for setting aside the aforesaid order of dissolution of marriage (CMA.No.289 of 2004).

2. Today, Mr.Suresh Pillai, the appellant is present. Heard Mr.D.Kanagaundaram, learned counsel for the appellant and Mrs.Meenal, learned counsel for the respondent.

3. Broadly, the respondent-wife had filed HMOP.No.99 of 1997 before the Principal Sub Court, Cuddalore, for dissolution of marriage dated 21.10.1991 against the appellant. The respondent/wife was examined and the appellant examined him in chief but did not appear for the cross examination. The Family Court therefore closed the evidence, proceeded to allow the petition Vide its judgement and decree dated 16.10.2001, and dissolved the marriage. On 29.10.2001, the appellant filed I.A.No.2 of 2002 under Order 9 Rule 13 C.P.C to set aside the ex parte order. This I.A.No.2 of 2002 came to be dismissed on 24.04.2003. Challenging the dismissal in I.A.No.2 of 2002, C.M.A.No.289 of 2004 was filed and yet another

appeal in C.M.A.No.2246 of 2004 was filed challenging the decretal order passed in HMOP.No.99 of 1997.

4.1 In its Order in HMOP.No.99 of 1997, the Sub Court, Cuddalore, the appellant was directed to pay a sum of Rs.5,00,000/- as permanent alimony to the respondent.

4.2 When the matter came up before this Court on 23.02.2017, it was brought to the notice of the Court that the respondent-wife has filed E.P.No.324 of 2013 before the I Additional District Court, Thiruvananthapuram, that the appellant was ready to pay Rs.5,00,000/- towards permanent alimony to the respondent. However, he also expressed that the respondent has not been appearing before the Execution Court till date.

5. On that date (23.02.2017), the learned counsel for the respondent-wife informed the Court that she has no instructions from the respondent and even the registered post that she has sent to the address given by her client (the respondent) was returned without service.

6. It is now informed by the learned counsel for the appellant that the appellant is not keen to prosecute these appeals and he is also ready to deposit the permanent alimony amount before the Execution Court at Thiruvananthapuram. However, the appellant also expressed his anxiety that he is bonafide believe that the whereabouts of the respondent is not known and that someone is attempting to impersonate the respondent, play fraud on the court and collect the permanent alimony.

7. The appellant being the architect of these appeals, it is for him to decide if he wants to prosecute them or not. The appellant himself has made an endorsement in the case bundle that he is withdrawing both the appeals and also undertakes to deposit Rs.5,00,000/- as permanent alimony in the Execution Court.

8. As to his concern or apprehension that the Execution Court is likely to be duped by impersonation is concerned, the Execution Court will enquire the matter, identify the respondent before disbursing the amount deposited by the appellant. No court would tolerate anyone playing fraud on judicial process, and should someone attempts to impersonate before Court, the matter is grave and serious and it cannot be brushed aside or approached lightly.

9. In view of the endorsement so made, these appeals are dismissed as withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To:

1.The Subordinate Judge  
Cuddalore.

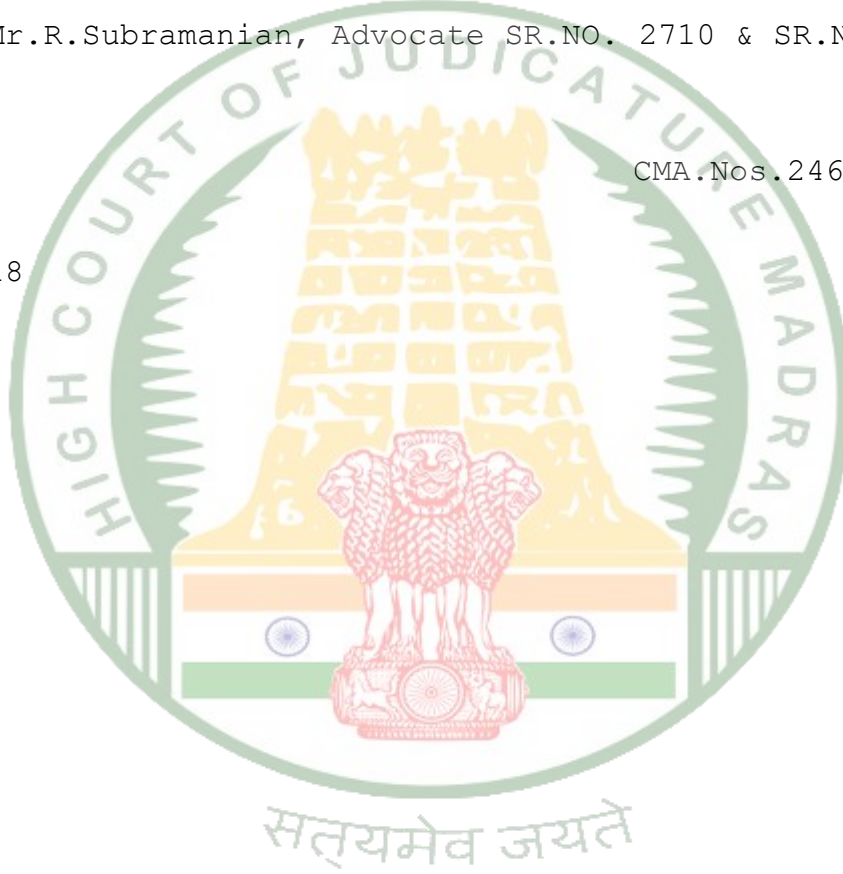
2.The Section Officer  
VR Section  
High Court, Madras.

+1 cc to Mr.D.Kanagasundaram, Advocate SR.NO. 3144

+2 cc to Mr.R.Subramanian, Advocate SR.NO. 2710 & SR.NO. 2711

CMA.Nos.246 & 289 of 2004

RV(CO)  
JK 06/02/18



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