

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.M.A.No.2840 of 2018
and C.M.P.No.21645 of 2018

P.Panneerselvam
Technical I (PF No.0398703)
BLF/TL Unit Shop TLW/PER
The Chief Electrical Workshop Engineer,
Southern Railways,
Perambur, Chennai -2 Appellant/5th Defendant

Versus

1. Banumathy
2. The General Manager,
Southern Railways, NGO Building,
Park Town, Chennai -3.
3. The Chief Personal Officer,
Southern Railways,
Park Town, Chennai -3.
4. The Chief Electrical Engineer,
N.G.O. Buildings, Park Town,
Chennai -3.
5. The Chief Electrical Workshop Engineer,
Southern Railway, Perambur,
Chennai -23. ...Respondents/Petitioner

Prayer : The Civil Miscellaneous Appeal is filed under Section 43 Rule 1 of Code of Civil Procedure, against the Fair and Decretal order dated 27.09.2018 made in I.A.No.1566 of 2018 on O.S.No.45 of 2018 on the file of the III Additional Family Court, Chennai.

For Appellant	:	Mr.M.L.Ramesh
For Respondents	:	Mr.T.Ramadevi (for R1) Mr.M.Vijay Anand (for R2 to R4)

JUDGMENT

The Civil Miscellaneous Appeal is filed under Section 43 Rule 1 of Code of Civil Procedure, against the Fair and Decretal order dated 27.09.2018 made in I.A.No.1566 of 2018 in O.S.No.45 of 2018 on the file of the III Additional Family Court, Chennai.

2. The appellant is husband and the first respondent is wife. They got married on 04.06.1993 and out of their wedlock they got two male children. One of the child was died in the train accident. Thereafter due to some family disputes, both got separated and hence the wife filed a maintenance case before the Family Court. Then the wife, being the plaintiff, filed a suit in O.S.No.45 of 2018 before the Family Court, Chennai seeking permanent injunction restraining the respondents/defendants from disbursing the retirement benefits and other benefits to the appellant/5th defendant till the payment of arrears of maintenance pending on the file of V Additional Family Court, Chennai.

3. During the pendency of the suit, the wife filed an Interlocutory application in I.A.No.1566 of 2018 in O.S.No.45 of 2018 before the learned III Additional Principal Judge, Chennai for temporary injunction restraining the respondents from disbursing the terminal benefits and other benefits to the appellant herein. After contest, the Interlocutory Application was allowed thereby granted interim injunction in favour of the wife/first respondent.

4. It is the grievance of the appellant that because of the order dated 27.09.2018 made in I.A.No.1566 of 2018 in O.S.No.45 of 2018 on the file of the III Additional Family Court, Chennai, the entire service benefit has not been received by the appellant. Therefore, challenging the said order dated 27.09.2018, the appellant is before this Court.

5. The learned counsel for the first respondent would submit that from the date of granting interim order, arrear amount has not been paid by the husband/appellant. The learned counsel would further submit that since she is an illiterate lady and no means of income, she finds it difficult in leading her life. Hence the first respondent seeks to disburse the arrears amount of maintenance as prayed for in the suit.

6. Heard Mr.Ramesh.M.L. learned counsel for the appellant and Mr.T.Ramadevi, learned counsel for R1 and Mr.M.Vijay Anand, learned counsel appearing on behalf of R2 to R4 and perused the materials available on record.

7. When the trial Court has passed an order giving indulgence to the husband, by granting an opportunity for

further hearing, the husband, without appreciating the indulgence shown and without complying with the order, has chosen to challenge the order made in the Interlocutory application, by filing this appeal. Substantive justice could be done only by deciding the case on merits and not by hearing the case of the husband.

8. Therefore, on a perusal of records, it is seen that the service benefit of the appellant has not been disbursed till date. On hearing both sides, considering the facts and circumstances of the case, to bring a quietus to the issue, this Court is inclined to give suitable direction to the fourth respondent to disburse the service benefits with regard to the claim made by the appellant as well as the first respondent.

9. Therefore, out of the entire service benefits, the fourth respondent is directed to issue a cheque of Rs.1,25,000/- (Rupees one lakh twenty five thousand only) to the first respondent/wife and a cheque of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) to the credit of O.S.No.45 of 2018 on the file of the III Additional Family Court, Chennai. Balance amount of service benefits shall be paid to the appellant. All the above transactions shall be done within a period of three weeks from the date of receipt of a copy of this order.

10. On such deposit made by the fourth respondent, the III Additional Family Court, Chennai is directed to dispose of the suit in O.S.No.45 of 2018 within a period of two months from the date of receipt of a copy of this order on day to day basis without giving adjournment to either of the parties. On passing the judgment in the suit in O.S.No.45 of 2018, the amount of Rs.1,75,000/- (Rupees one lakh seventy five thousand only) shall be disbursed accordingly.

11. With the above direction, this Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vum

To

1. The III Additional Judge
Family Court
Chennai.

2. The Section officer
VR Section, High Court, Madras 104.(2 copies)

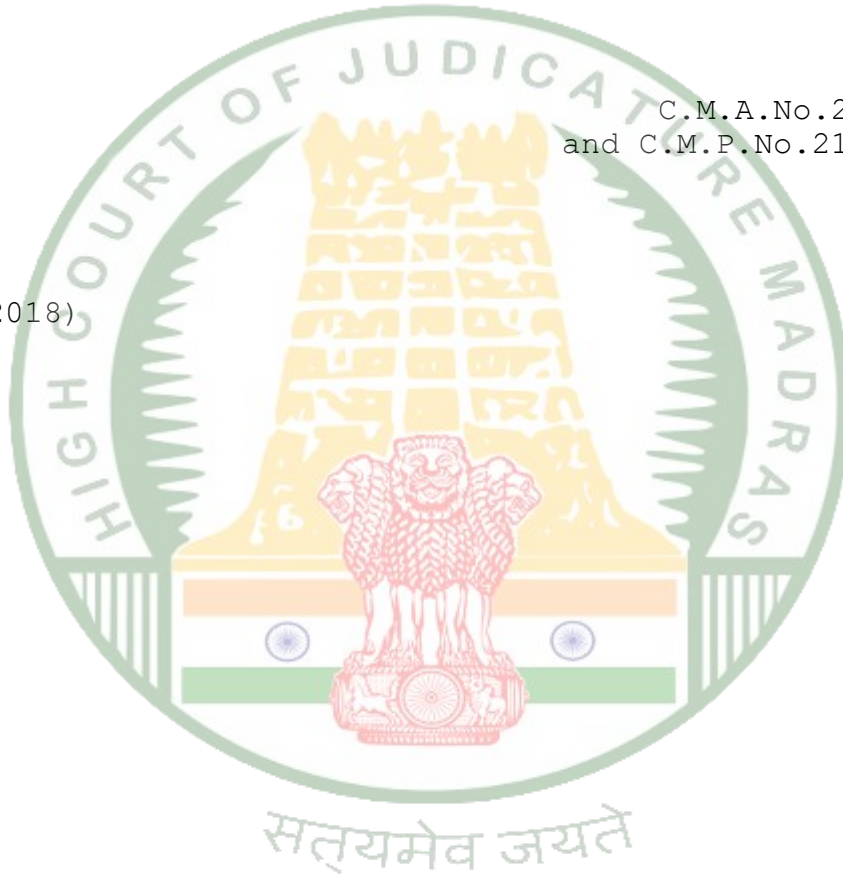
+1 CC to Mr.P.T. Ramadevi, Advocate sr 88186.

+1 CC to Mr.M.Mr.M.Vijay Anand , Advocate sr 89009

+1 CC to Mr.L.Ramesh, advocate sr 88299.

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KK(CO)
SP(21/12/2018)



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