

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.Nos.5 and 6 of 2018

P.Senthilkumar
rep. by his Power Agent
M.K.Periasamy

... Appellant in both the appeals/
Petitioner

Vs.

V.Kalpana

... Respondent in both the appeals/
Respondent

Prayer in C.M.S.A.No.5 of 2018

Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, 1955 r/w Section 100 of Civil Procedure Code to set aside the Judgment and decree dated 22.03.2017 passed in C.M.A.No.13 of 2015 on the file of Principal District Judge, Chengalpattu and the order dated 12.06.2014 passed in I.A.No.115 of 2013 in H.M.O.P.No.45 of 2008 on the file of Sub Judge, Tambaram.

Prayer in C.M.S.A.No.6 of 2018

Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act, 1955 r/w Section 100 of Civil Procedure Code to set aside the Judgment and decree dated 22.03.2017 passed in C.M.A.No.10 of 2014 confirming the Judgment of the trial court dated 12.06.2014 in H.M.O.P.No.45 of 2008 dissolving the marriage of the appellant and respondent on 01.02.2002.

For Appellant : Mr.K.Pandurangan

For Respondent : Mr.R.Asokan

C O M M O N J U D G M E N T

Since the issues involved in both the cases are one and the same, they are taken up together and a common judgment is being passed.

2. The appellant has raised the following questions of law in C.M.S.A.Nos.5 and 6 of 2018:

C.M.S.A.No.5 of 2018:

(i) Whether the Lower Appellate Court was justified in upholding the order of the trial court awarding permanent maintenance to the respondent/wife who is a qualified Architect leading a lucrative profession?

(ii) Whether the lower appellate court was justified in upholding the order the trial court awarding maintenance to the respondent /wife who has accepted the acts of cruelty before and during the trial proceedings, of indulging in attempts to commit suicide or threatening to commit suicide, leading to the situation of irretrievable break down of marriage?

(iii) Whether the Lower Appellate Court was right by ignoring the Supreme Court Judgment, Viz., AIR 1975 SC 1534 and several other Judgments cited by the Appellant / Husband which resulted in total miscarriage of justice?

C.M.S.A.No.6 of 2018:

(i) Whether the Lower Appellate Court was justified in not upholding the settled position of Law by Supreme court that 'threat to commit suicide is mental cruelty in view of the Supreme Court Judgment in Mayadevi V. Jagdish Prasad (AIR 2007 SC 1426 Para 9 and AIR 1975 SC 1534 paras No.24, 30 and 51)

(ii) Whether the lower appellate court was justified in ignoring the position of Law laid down by the Supreme Court that there is 'Irretrievable breakdown of marriage' when there is a long period of continuous separation i.e., 14 years in this matter with reference to the Supreme Court Judgment in (2007) 4 SCC 511)?

(iii) Whether the respondent / wife's son non-seeking of the relief of restitution of conjugal rights has been completely ignored by the lower appellate court?

(iv) Whether the Lower appellate Court was justified in completely ignoring the view of Supreme Court in the Judgment viz., (2010) 10 SCC 513 (paras 15 and 18) and holding that the evidence of the power

of attorney is insufficient?

(v). Whether the lower Appellate Court was justified in not applying Section 13(1)(ia) of the Hindu Marriage Act 1955 to the facts of the case?

(vi). Whether the Lower Appellate Court was justified in not considering the facts and materials, averred in the petition filed by the appellant seeking divorce?

(vii). Whether the Lower Appellate Court by ignoring the law declared by the Supreme Court which shall be binding on all courts, has violated the Article 14 of the Constitution of India.?

3. The case of the appellant is that he has filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 before the Subordinate Court, Tambaram represented by his Power of Attorney, [dated 15.10.2008, executed at Georgia, USA] father, viz., M.K.Periasamy, residing at No.39/119, P.V.Vaidyalingam Road, Old Pallavaram, Chennai - 600 117 for divorce. The appellant has stated that the respondent /wife has behaved with him in a rude and cantankerous manner and she did not do any house hold work stating that she is hailing from a very wealthy family. When the appellant wanted to include the respondent's name in the process of getting green card in USA, the authorities had directed her to undergo medical test. The test revealed that she had been suffering from tuberculosis for a very long time. Whenever the appellant asked her to take medicine for treatment of tuberculosis, she refused to do that adamantly, but had swallowed 10 to 15 regular medication tablets meant for thyroid treatment, as she intended to commit suicide. The said incident took place in the year 2002 and this had caused mental agony to the appellant. Further, the respondent made a demand to bring her parents to USA for a six months stay, the same was not conceded by the appellant, she again made attempts to commit suicide by consuming 10 to 15 tablets, meant for some other ailments in the first week of October, 2002, but with great difficulties, the appellant made the respondent to spit out all the tablets out of the mouth. When the respondent wanted to visit India to attend the marriage of her brother, the appellant had refused to accept her plea, in view of the fact that she was in advanced stage of pregnancy and her health would not permit her to undertake such a tedious and tiresome journey, she again made suicide attempt by consuming 15 tablets meant for thyroid treatment in the third week of october, 2002 and the said incident of attempting to commit suicide forced the appellant to allow the respondent to India. Hence the very frequent attempts to commit suicide had disturbed the appellant very much and had found himself restless even during office

hours and thinking as to what would be going on at home, since she had a tendency to commit suicide even on a minor issue.

4. The further case of the appellant is that the respondent's parents are engaged in real estate business and at the instigation of respondent's parents, the respondent had asked him to buy two flats from her father and when the appellant turned down the business proposals of her parents, the respondent had become very upset and started picking up quarrel even on minor family issues and threatened to commit suicide. The respondent's act of attempting to commit suicide very often for minor family problems had put the appellant in a miserable position and restlessness and this had affected his career.

5. Apart from the above, it is the case of the appellant that during September 2003, on a visit to Chennai, the respondent's father had come to the appellant's residence with his relatives accompanied by his son, at that time, when the appellant reminded the said relatives about the frequent attempts on the part of the respondent's attempt to commit suicide, the respondent's brother had tried to hit him and abused the appellant's parents in filthy language. Then, again in September, 2003, the appellant had called the respondent and asked her to be ready to visit USA during October 2003, but she had refused to return to USA though the appellant had purchased tickets both for her and her child.

6. According to the appellant, the respondent's relatives had threatened the appellant's parents that they would file a dowry harassment case against them and the respondent has also filed a complaint on 15.12.2005, after three years of marriage to return all jewels, fixed deposit certificate given at the time of marriage, and they were all returned by the appellant's father in the presence of respondent's father and some witnesses in the police station and the respondent had acknowledged the same by a letter dated 12.01.2006 addressed to the Inspector of Police, All Women Police Station, St. Thomas Mount, Chennai - 600 016. The appellant submits that the respondent had filed a complaint against the appellant's parents alleging that they had refused to handover her jewels, educational certificate including her passport. Hence the appellant issued lawyer's notice on 11.07.2008 for dissolution of the marriage and the same was replied by the respondent through her advocate on 06.08.2008. In the petition, the appellant has stated that he will file a separate petition for the custody of the child and thereby requested to grant divorce.

7. Per contra, the respondent/wife has filed a counter affidavit before the trial court denying all the allegations and states that the appellant cannot represent by power of attorney in the matrimonial dispute, which is contrary to the procedural law. Moreover, the power of attorney in the above case is the father of the appellant, who is also a root cause for the entire dispute. It has been a mere figment of imagination created by the appellant for the mere purpose of obtaining divorce to get rid of the respondent. The respondent was staying with the appellant for a limited period of few months from the date of marriage and subsequently, the appellant sent her to India under the guise at the instigation of the appellant's parents, now making a false frivolous allegation thereby describing the respondent, as a cruel person and behaved against the appellant in a physchick manner, which are all an after thought arrangement, after a lapse of several years to forcibly separate from the respondent. If at all the appellant is aggrieved, he would have filed a petition immediately since he returned to India in the year 2003, but only in the year 2008, after a lapse of 5 years, he has filed this petition. With regard to the allegation that the respondent had T.B., it was found through a medical test that both the appellant and the respondent had been confirmed of skin level T.B. and the same is quite common from the people originating from Asian countries. However, during the subsequent medical test including lung X-ray and other incidental medical test, both of them proved negative and cleared for green card formalities. She could not get green card at that time, because she was forcibly evicted from USA. The respondent took medicines for T.B. and thyroid treatment were falsely stated by the appellant to strengthen his case for obtaining divorce, which amounts to deliberate misleading of this Court's attention. The respondent's parents on their cost visited USA for her delivery and she did not ask the appellant to pay for the same. The respondent's suicide attempt at several stages has been denied and the respondent never insisted the appellant to purchase two flats from her father. If the respondent attempted to commit suicide very often, the appellant would have communicated the information to the respondent's parents by the available mode either by writing a letter or by sending e-mails or any other mode. In the absence of such materials, the entire allegations regarding respondent had attempted to commit suicide, should not be entertained.

8. The counter of the respondent/wife proceeds to state that ever since from September 2003, the respondent with her infant child had been under the care of her parents and all the basic sustenance for the respondent and the infant male child had

been provided by her father at his advanced age. The appellant at the instigation of his parents, forcibly seized the respondent and her infant child's passport, her educational certificate and jewels. Since the respondent's efforts to retrieve the same from their custody became futile, they had no other option, but to lodge a police complaint and retrieved those articles, wherein the appellant's parents refused to handover the infant son's passport. The respondent during her short stay at USA, subjected to mental and physical cruelty wherein the appellant unmindful of the respondent's maternity status brutally assaulted the respondent and all her hue and cry was telephonically informed to her parents at Pallavaram and the respondent submits that no cause of action arose for the appellant to file this petition.

9. Further, the respondent / wife has filed a I.A.Nos.115, 116 and 117 of 2013 seeking maintenance of Rs. 50,000/- to herself and Rs.50,000/- to their school going child till he attains majority; to direct the respondent/ husband to pay a sum of Rs.50,000/- per month as interim maintenance for the respondent/wife and to pay Rs.50,000/- per month for her minor son from September 2003 to till the date of disposal of the above case and to direct the appellant to handover the minor son, viz., Sharath, passport to the respondent/ wife respectively.

10. The appellant / husband had filed his counter to the aforementioned I.As stating that the claim of maintenance amount of Rs.1,50,000/- per month by the respondent would clearly go to show that only respondent is harassing the appellant and he is prepared to pay a reasonable amount for maintenance only for his minor son and not for his wife and he is ready to seek the custody of the child. As the respondent has committed cruelty and worked as 'Architect' she is not entitled to claim any sum as maintenance. He has also stated that the respondent's father, runs a construction company and is not doing well financially and that is why the respondent has claimed such an exorbitant amount and the claim is only on her father's interest rather than the interest of minor child. Since the appellant has already filed a petition seeking custody of the child, there is no necessity for him to handover the minor son's passport to the respondent and thereby prayed to dismiss the Interlocutory Applications filed by the respondent.

11. On perusal of the records it is seen that the learned Subordinate Judge, Tambaram in I.A.Nos.115, 116, 117 of 2013 [filed by respondent/wife] in H.M.O.P.No.45 of 2008 on 12.06.2014 has come to the conclusion that the respondent/wife has not denied that she tried for committing suicide on three

attempts and subsequently tried to commit suicide even on minor problems, which found place in the appellant's Lawyer's notice issued 11.07.2008. In her cross examination, she has admitted the same. When the appellant tried to take her back to USA, she has stated that at that point of time, she was not well and since there was some problem, she requested for some more time to go back to USA. Further, the appellant had contended the respondent one time demanded to bring her parents to USA, which was not accepted by the appellant and again the respondent demanded to buy two flats from her father and that the respondent picked up quarrel and threatened to commit suicide. The lower court has come to the conclusion that there was no documentary evidence produced by the appellant and Ex.P.8 and Ex.P.9 shows that there was money transaction between the appellant's father and respondent's father and there was a good relationship maintained between them and the money borrowed was also returned back with interest. The lower court had held that the rift between the parties has got widened only because of forcible seizure of passports of respondent and their child passport, educational certificates and jewelleryes. Further, the respondent's attitude of lodging complaint against him and his parents and attempting to commit suicide by the respondent has caused mental agony, which was accepted in toto and the prayer of the appellant in seeking divorce on the ground of cruelty was allowed. The I.As filed by the respondent were disposed by granting a sum of Rs.10,000/- per month for her towards future monthly maintenance from the date of order till her life time or on the date of any 2nd marriage solemnised by her and also directed to pay a sum of Rs.10,000/- per month to the son of the respondent towards future monthly maintenance from the date of order of trial court to till he attain major on or before 5th of every month. Before the trial Court, the appellant, Power of attorney has admitted that only when the trial court directs him to handover the passport of minor grand son, he will handover the same to the respondent and thereby, the trial court has directed to handover the passport of the Minor Son, viz., Sharath, to the respondent/wife.

12. As against the said order passed by the learned Subordinate Judge, Tambaram in I.A.No.115 of 2013 in H.M.O.P.No.45 of 2008 dated 12.06.2014, the appellant has filed C.M.A.No.13 of 2015 and against the said order dated 12.06.2014 passed by the trial court in H.M.O.P.No.45 of 2008, the respondent / wife has filed C.M.A.No.10 of 2014 before the learned Principal District Judge, Chengalpattu.

13. After going through the order and Decree passed by the learned Subordinate Judge, Tambaram in H.M.O.P.No.45 of 2008,

the learned Principal District Judge, Chengalpattu passed orders in C.M.A.No.10 of 2014 and 13 of 2015 [filed by the respondent/wife and petitioner/husband respectively]. The appellate court has observed that the complaint has been filed against father-in-law by the respondent only for return of her educational certificates, passport of her and the child. The complaints were of the year 2005, as evidenced from Ex.P.10, Ex.P.11 and Ex.P.12. From the evidence of P.W.1, both the parties are living separately from 2005 and only the respondent/wife has given a complaint before the police station for return of articles and the appellant's parents also returned the Jewels, educational certificates and passport of the respondent. The husband and wife are living separately from the year 2003 and from the P.W.1's evidence, with regard to suicide attempt, it is clear that there was no complaint given before the Police in USA to prove the same and the P.W.1 is not a direct witness to the incidents and it was only hearsay evidence. The contention that the appellant has informed the same to his parents was not proved and the Appellate court has come to the conclusion that there was no attempt or threat to commit suicide by the wife. The said court held that to prove the act of cruelty, the person, who suffered the act of cruelty is the competent person to depose and the genuineness of the allegation can be tested only by cross examining him and further held that the husband alone, is a competent witness and as he has not been examined, the same is not proved. The in-laws were not residing with the appellant and respondent and relying upon the evidence of P.W.1, the appellate court has decided the issue. Accordingly, C.M.A.No.13 of 2015 filed by the husband to set aside the maintenance granted to the wife was dismissed. Aggrieved against the same, the appellant has preferred these appeals.

14. The learned counsel for the appellant in support of his contentions relied on the following Judgments of Hon'ble Supreme Court:

(i) Man Kaur (Dead) By Lrs. V. Hartar Singh Sangha reported in (2010) 10 Supreme Court Cases 512.

(ii) Samar Ghosh V. Jaya Ghosh reported in (2007) 4 Supreme Court Cases 511.

(iii) Dr.N.G.Dastane V. S.Dastane reported in AIR 1975 Supreme Court 1534 (1)

14. The appellant has filed C.M.S.A.Nos.5 and 6 of 2018 stating the following grounds:

(i) The Lower Appellate Court has erroneously confirmed the order passed in I.A.No.115 of 2013 in H.M.O.P.No.45 of 2008 dated 12.06.2014 by the Sub Judge, Tambaram, wherein

maintenance was awarded to the respondent /wife, who is a qualified professional Architect.

(ii) The lower appellate court has failed to note down the fact that the respondent / wife is responsible for the situation of 'irretrievable breakdown of marriage' due to her abnormal behavior of making attempts to commit suicide or threatening to commit suicide for no reason whatsoever, with the sole purpose of harassing the appellant / husband.

(iii) When the respondent /wife had not specifically denied about her attempts to commit suicide, the Lower Appellate Court has not considered the same and passed orders.

(v) The Lower Appellate Court has failed to note that threat to commit to suicide itself is a mental cruelty, which has been upheld in AIR 1975 SC 1534 and the said judgment was not discussed by the Lower Court and the other Judgments cited.

(vi) The lower appellate Court had failed to consider that when the respondent/ wife had attempted to commit suicide, the same itself gives mental cruelty to husband.

15. Per contra, the learned counsel for the respondent relied on the following Judgments of HOn'ble Supreme Court and this Court respectively:

(i) Darshan Gupta V. Radhika Gupta reported in 2013 (6) CTC 560

(ii) R.R.Pauvya V. C.Kanagavel reported in 2014 (5) CTC 177

16. Heard the learned counsel for the appellant as well as the respondent and perused the documents placed on record.

17. It could be seen from the petition [filed by the appellant/husband for divorce] that the respondent tried to commit suicide, only for the reason that she was adamant; has not taken medicine properly for T.B. and when she was forced to eat tablets, she had swallowed the tablets meant for thyroid problem. There is no averment that she tried to commit suicide by taking any other pill, which will cause death. On all the occasions, the appellant has stated that he made the respondent to spit the same and no evidence was produced before this Court or lower courts to show that he has given any complaint before the police or information to his relatives immediately after the said incident.

18. Further, the appellant has also stated that at the time of advanced stage pregnancy, he allowed the respondent to visit India, she went and took part in her brother's wedding and if

the husband genuinely wanted to take her, he would have called her to USA again and it is also noted that she, citing some health grounds has refused to visit USA, at that time and if at all the appellant is really concerned about the respondent, he would have made alternative arrangements, instead he had taken the passport of his son and wife and entrusted the same with his parents would show that the husband had no intention to take her, but forced her to get it from his parents. The said husband has not chosen to reply even to the respondent's phone calls made and he has cut his connection entirely with his wife and child, which would show that he was reluctant to take back his wife and deserted them.

19. It is further seen that marriage took place in the year 2002 and the dispute arose in the year 2003 and in the year 2005 only, the respondent has asked for return of her jewels, other educational certificates, her passport and her child's passport etc., but the same was refused by the parents of the appellant and only with no other option, she has lodged a complaint with the All Women Police station, St. Thomas Mount, Chennai. Thereafter, the police called for an enquiry, at that time, the parents of the appellant had returned the certificates and jewels and the child's passport was not handed over back to her at that time.

20. Apart from the above, the respondent / wife's request to handover the passport of her child was not acceded to by the appellant / husband and the appellant has not chosen to send them relevant documents for their visit to USA, and hence he was really not interested in them. To apply for USA visa, supporting documents are needed from the person, who is at USA and the wife could not have travelled to USA in the absence of necessary documents. After the incident occurred in the year 2005, the appellant has not taken any steps to take back his wife to USA and there was no communication at all with the said parties.

21. The appellant, who had taken a decision in the year 2008 for seeking dissolving the marriage, had filed a petition and reiterated that the respondent/ wife tried to commit suicide and all the allegations cited supra, which were not supported with any materials, had only sent a legal notice, after four years. The appellate court has held that the lower court has taken note only the averments of the appellant that the respondent has attempted to commit suicide and has decided that she has not specifically denied the same, was not agreed upon and has rightly dismissed the order passed by the lower court, which this was not erroneous.

22. For accusing a person that she has caused mental cruelty, the husband, who has felt the same has to depose and the same cannot be proved by the evidence of the third party, who is the father of the appellant. The deposition of the appellant's father are all hear say evidence and it is not direct evidence. When the case was tried before the lower Court, which had allowed the matter, should have heard through video conferencing, but the court has failed to do so. It has been found in the pleadings that the appellant's father, who is the power of attorney has filed an application for conducting trial through video conferencing, but at later point of time, they had withdrawn the same, this itself shows that the husband was not ready even to appear before the court through video conferencing. The husband atleast for conducting trial, he ought to have attended the court, either by way of personal appearance, or through video conferencing, which attitude would show that he had hesitation to face the trial.

23. The respondent's attempt to join the appellant went in vain and desertion by the wife is not proved as there are sufficient material and pleadings to state that the wife has taken steps to communicate with the husband and the husband has not chosen to reply the same. The appellant after five long years, has filed this petition for divorce for the incident, that had taken place in the year 2003 would show that the appellant was not seriously attempting to take back the wife and child and stating that she did not come when called, would clearly establish that the appellant/husband was waiting for a chance. The appellant cannot maintain a petition in the absence of any proof to show that he was facing cruelty.

24. Regarding the medical test that the respondent / wife is having T.B., she has submitted that it is only skin TB, which is common for the people from Asian Countries and the same was negatived by the trial court and no contra evidence was produced by the appellant / husband.

25. If at all the respondent/wife had tried to commit suicide, the appellant / husband would have taken her to the hospital and given her same treatment, which he had not done so. He has not given any complaint to the police in USA or informed her parents regarding the same. The appellant / husband, who has not subjected himself for cross examination and contention of wife that the father-in-law, who is Power of Attorney is not a competent person to depose on behalf of the appellant and the appellant has suffered mental agony due to the act of the

wife, is not accepted by this Court, as there is no materials to prove the same.

26. The appellant also has stated that he is not ready to pay maintenance stating that the wife is qualified as Architect and he did not want to pay any money to his wife and he is liable to pay only for his son stating that his wife has got permanent income for maintenance, this Court is of the view that the respondent has filed a petition in the year 2009 and numbered only in 2013, which shows that she could not maintain herself and her son. After hearing the parties, the lower court has allowed the interim maintenance application thereby a sum of Rs.10,000/- each was granted to the respondent and her son.

27. The main petition, viz., H.M.O.P.No.45 of 2008 was filed by the appellant under Section 13(1) (ia) of Hindu Marriage Act, 1955 for divorce on the ground of cruelty that she was trying to commit suicide and to such averment no documentary evidence has been produced by the said appellant either for taking treatment for T.B. Or for Thyroid.

28. When the complaint by the appellant was only on the basis of test taken and in the result that the respondent had T.B. was discovered and when she was forced to take medicine for T.B., she was adamant to take medicine, tried to commit suicide, were not proved and there is no material to show that she had inflicted cruelty on the husband, the claim of inflicting cruelty is to be negated and the same is accordingly negated.

29. Regarding the issue of investment on the respondent's father's flat promoting business, no materials have been produced before this Court to show that there was an attempt to commit suicide, due to denial of purchase of flats. When such claim was made by the respondent/wife to the appellant/husband, it is seen from the deposition that the money transaction was there between both the parents and the same was also returned by the respondent's father, no such misunderstanding has arisen due to the said act and they were having cordial relationship. The lower court erred in coming to the conclusion that since wife has not denied about the act of committing suicide in the reply notice, which is drafted by the advocate, who while drafting of reply notice has not specifically denied, cannot be put against the respondent/wife. She has openly stated at the time of trial that she had not committed such act of trying to commit suicide and that there was no evidence to show that she has inflicted cruelty on the appellant.

30. After all, if the respondent has caused mental cruelty, the appellant / husband ought to have issued notice at the time when he left to USA, but he did not do so, but, waited for five long years to issue such a notice and this allegation of threat to commit suicide are solely alleged in order to get divorce on the ground of cruelty.

31. When the husband has not proved the fact that there was an act of cruelty, the appellant has not established the case for granting divorce under Section 13(1) (ia) of the Hindu Marriage Act, 1955. As the cruelty has to be deposed by a person, who himself was subjected to cruelty and on cross-examining the appellant's father, Court cannot decide and give reasons, as if there was an act of cruelty proved beyond doubts.

32. In the C.R.P. No.2916 of 2011 filed by the respondent/wife against the order accepting POA, in I.A.No.270 of 2010, this Court at Paragraph No.8 has observed as follows:-

'Further more even assuming that the evidence given by the Power Agent is only a her say, it is not going to affect the case of the petitioner(wife). If at all it will affect only the respondent. If the respondent takes that risk, the petitioner need not worry about the same.'

33. In the matrimonial dispute, the Power of attorney holder cannot depose and let in evidence and there was opportunity, which are known to husband and wife before the lower Court to have a trial through video conferencing, which was also pleaded by the appellant/husband and for reasons known to them to the said application.

34. Regarding the maintenance, the father of the appellant herein has stated in his pleadings that he has filed a petition seeking custody of the child, but till date, no petition has been filed and no such materials produced before this Court. Further, it is seen that the appellant from the year 2003 has left his wife and had not paid any money for his son's educational expenses also and has filed a appeal against the maintenance of Rs.10,000/- awarded to each person. A person working in USA and earning in dollars, had not chosen to pay. The respondent / wife, who had studied architecture had claimed maintenance, as she is not able to support livelihood for her, has to be looked into, as it is a duty of the husband to maintain the wife and child. Even assuming the payment of Rs.10,000/- to the respondent/wife, at this juncture, where the

cost of living has gone up, it would not be a fair and reasonable amount and Rs.20,000/- will be utilised for the welfare of son. This Court is inclined to interfere with the same.

35. In the above stated circumstances, the passport of the minor son shall be handed over to the respondent within a period of four weeks from the date of receipt of a copy of this order. Taking note of the fact that the child, born in the year 2003, now, studying in IX or X Standard, may require more money for educational expenses, therefore, the appellant herein is directed to pay a sum of Rs.10,000/- in addition to Rs.20,000/- already granted by the lower court on or before 5th of every month.

36. That apart, when the father-in-law, who is the father of the appellant, was not residing with the appellant during the year 2002-2003, when the parties were residing in USA, he will not be proper and competent enough to give evidence before the lower court regarding cruelty committed by the wife against the husband armed with Power of Attorney. The appellant's father had let in evidence, which cannot be accepted and relied. The appellant / husband, who has not taken steps to let in evidence by video conferencing and the evidence of the Power of Attorney holder is devoid of merits, this Court is not inclined to accept the said evidence of the Power of Attorney holder. Hence, in the absence of any efforts taken by the husband to appear before the Court-in-person or letting in evidence by video conferencing, this Court is not inclined to accept the case of the appellant / husband and is inclined to set aside the the Judgment passed by the trial court and the Judgment and Decree passed by the lower appellate court is confirmed. The Power of Attorney holder can only assist the Court in the absence of husband and he cannot let in any evidence regarding the mental cruelty committed by another person. The substantial questions of law raised by the appellant are answered against him.

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Accordingly, this Court finds no reason to interfere with the Judgment and decree dated 22.03.2017 passed in C.M.A.Nos.10 of 2014 and 13 of 2015 on the file of learned Principal District Judge, Chengalpattu and the present appeals stand dismissed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

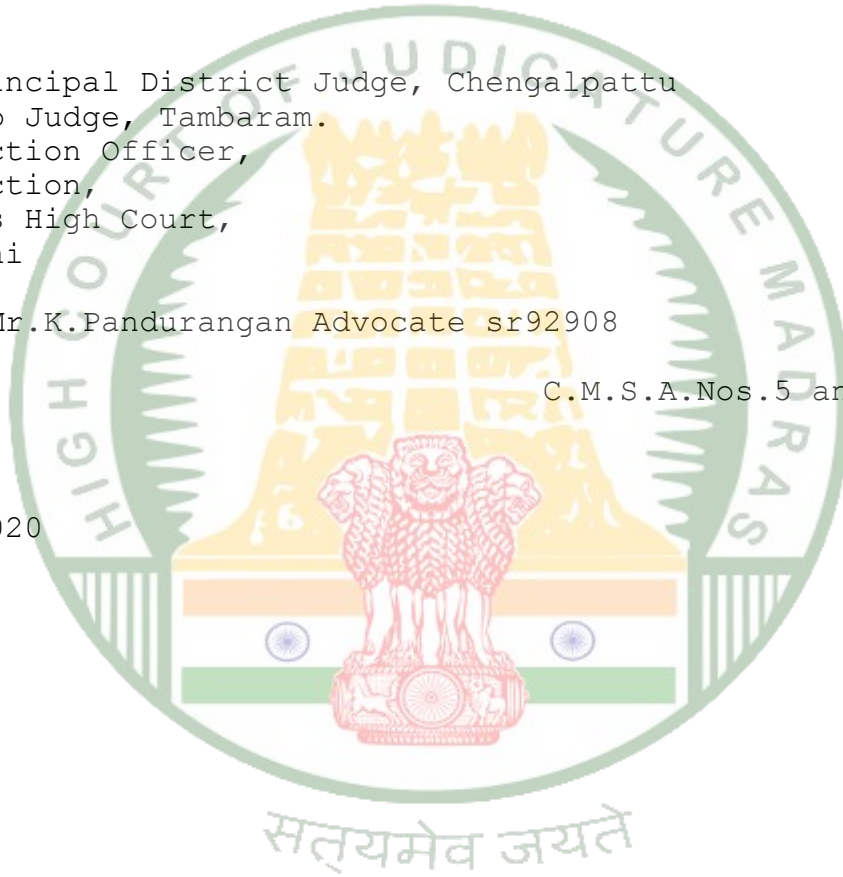
ssd
To

1. The Principal District Judge, Chengalpattu
2. The Sub Judge, Tambaram.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai

+1 cc to Mr.K.Pandurangan Advocate sr92908

C.M.S.A.Nos.5 and 6 of 2018

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