

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.15645 of 2018

Nasiba

... Petitioner

Vs.

1.Javeed Ali
2.A.Asmathunissa
3.Asif Ali
4.Sabiya Parveen

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the docket order of return dated 26.04.2018 (wrongly mentioned as 26.02.2018) in C.A.SR.No.1549 of 2018 on the file of Principal Sessions Judge, Salem against CMP.No.1429 of 2015 in DVOP No.86 of 2015 on the file of Additional Judicial Magistrate Mahila Court, Salem.

For Petitioner : Mr.J.Sudhakaran

For RR1 to 4 : Mr.C.Prabhakaran

ORDER

This petition has been filed to set aside the docket order of return dated 26.04.2018 (wrongly mentioned as 26.02.2018) in C.A.SR.No.1549 of 2018 on the file of Principal Sessions Judge, Salem against CMP.No.1429 of 2015 in DVOP No.86 of 2015 on the file of Additional Judicial Magistrate Mahila Court, Salem.

2.The learned counsel for the petitioner submitted that the petitioner is the wife and the respondents are her husband and in laws. She filed a petition in DVOP No.86 of 2015 for certain prayers. She also filed an interim application in CMP.No.1511 of 2016 for interim maintenance and it was allowed and the first respondent was directed to pay interim maintenance of Rs.5,000/- per month. Even then, the first respondent failed to pay the said amount. Therefore, she filed another petition in CMP.No.1429 of 2017 to provide accommodation to her pending disposal of the main DVOP. The learned trial judge without considering the above facts and circumstances ordered that the main case is ripe for trial and the said petition can be decided along with the main petition by order dated 13.11.2017, as

against which the petitioner preferred criminal appeal and the first appellate court returned the appeal stating that there is no fair order, as against which the present petition has been filed.

3. The learned counsel for the respondents would submit that the respondents are ready to go along with the trial in main petition in DVOP.No.86 of 2015. Further he submitted that the learned trial court rightly passed the order in CMP.No.1429 of 2017 that the said petition will be decided along with the main petition. Therefore, he sought for dismissal of this petition.

4. Heard Mr.J.Sudhakaran, the learned counsel for the petitioner and Mr.C.Prabhakaran, the learned counsel for the respondents.

5. The petitioner is the wife, and the respondents are her husband and other in laws. The petitioner filed a complaint in DVOC.No.86 of 2015. She also filed a petition for interim right to residence in CMP.No.1429 of 2017. In fact, the respondents also filed counter to the petition. Even then, the trial court did not pass any order and passed an order dated 13.11.2017 that the main case is ripe for trial hence the said petition will be decided along with the main petition. It is also seen that the petitioner also filed a petition in CMP.No.1511 of 2016 for interim maintenance in which the trial court passed order and allowed the same and directed the first respondent to pay a sum of Rs.5,000/- per month as interim maintenance. Insofar as her residence right is concerned, she filed this petition as interim relief till the disposal of the main petition.

6. Considering the above facts and circumstances of the case, the learned trial court namely the learned Additional Judicial Magistrate, Mahila Court, Salem is directed to conduct enquiry in C.M.P.No.1429 of 2017 and pass order on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this Order. Thereafter the trial court is directed to take the main complaint in DVOP.No.86 of 2015 and complete the trial within a period of twelve weeks thereafter.

7. With the above directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Judicial Magistrate Mahila Court,
Salem.

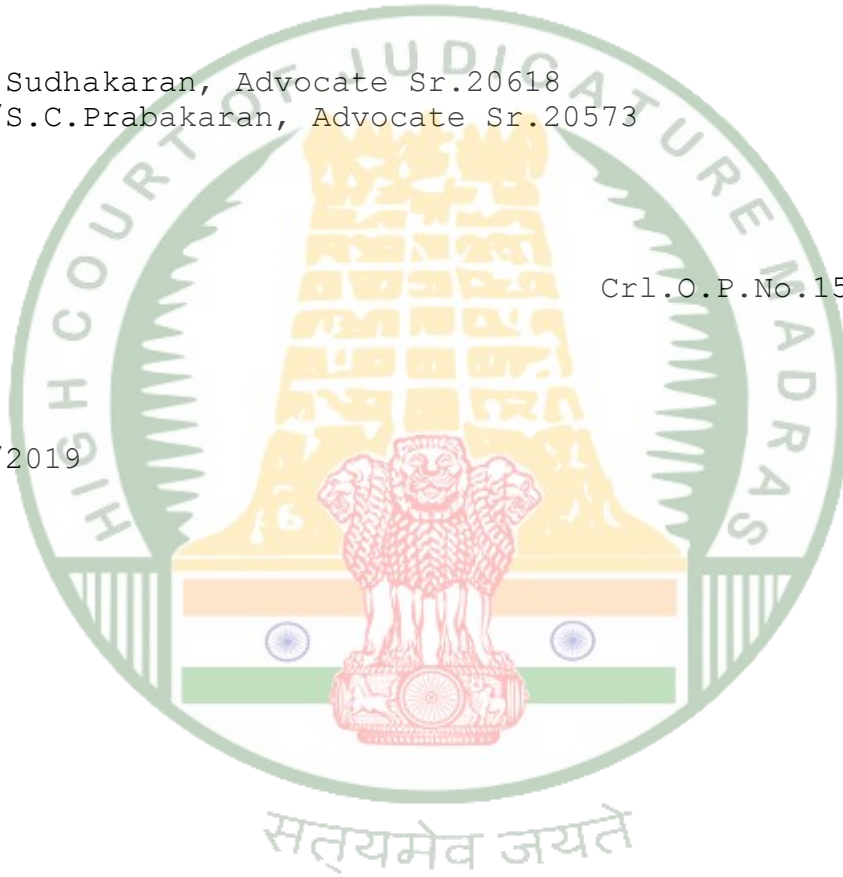
2.The Principal District and Sessions Judge,
Salem.

+1cc to I.Sudhakaran, Advocate Sr.20618

+1cc to M/S.C.Prabakaran, Advocate Sr.20573

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srg 18/03/2019



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