

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A. Nos.2578 and 2579 of 2017

Ramkumar @ Radhakrishnan ... Appellant/Petitioner in
both C.M.As.

Vs.

Rajeshwari ... Respondent/Respondent in
both C.M.As.

Prayer: Appeals filed under Section 19 of Family Courts Act, 1984, as against the orders made in F.C.HMOP.No.143 of 2016 dated 02.06.2017 and I.A.No.418 of 2016 in F.C.HMOP No.143 of 2016 dated 01.02.2017 respectively on the file of the Family Court, Dharmapuri.

For Appellant : Mrs.Zeenath Begum
in both appeals

For Respondent : No appearance
in both appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.Sundresh,J.)

Both these appeals have been preferred against the orders passed in dismissing F.C.HMOP No.143 of 2016 on 02.06.2017, which was filed seeking dissolution of marriage and allowing I.A.No.418 of 2016 in F.C.HMOP No.143 of 2016 on 01.02.2017, which was filed seeking maintenance respectively.

2. Heard the learned counsel for the appellant. Despite notice having been served and the name of the respondent having been printed in the cause list, none appears for the respondent.

3. HMOP No.143 of 2016 has been filed by the appellant seeking divorce. The respondent-wife filed an application in I.A.No.418 of 2016 in F.C.HMOP No.143 of 2016 seeking interim maintenance of Rs.25,000/- per month. The Family Court, Dharmapuri, has granted maintenance of Rs.10,000/- per month apart from Rs.20,000/- towards the litigation expenses. Since the aforesaid order has not been complied with, the main

original petition has been dismissed.

4. The learned counsel appearing for the appellant would submit that without any basis, the Family Court, Dharmapuri, has fixed the maintenance of Rs.10,000/- per month. It has been informed to the Family Court that an appeal has been preferred as against the said order and S.R. Number has also been given. Notwithstanding the same, the main O.P itself was dismissed. The appellant has got sufficient grounds to get a decree on merit and therefore the appeals will have to be allowed.

5. Insofar as the interim maintenance is concerned, we do not find any error in the order passed. The status of the parties being husband and wife is not in dispute. It is not the case of the appellant that the respondent is a woman of means. There is no material to show that the respondent is having independent means to support herself. Admittedly, the appellant is the only earning member of the family. Though a sum of Rs.25,000/- has been sought for, the Family Court, Dharmapuri, has awarded only Rs.10,000/- per month, which is very reasonable apart from Rs.20,000/- towards litigation expenses. In such view of the matter, C.M.A.No.2579 of 2017 stands dismissed.

6. However, we find considerable force in the submission in respect of the dismissal of HMOP No.143 of 2016. Merely the interim maintenance is not complied with, the main O.P., ought not to have been dismissed. The respondent has not made any request that without the said amount ordered by way of interim maintenance, she would not be in a position to conduct the case. Further, it is not, as if, the appellant was deliberately denying to comply with the order of the Court. The appellant is entitled to challenge before the appellate forum, which he did. In such view of the matter, the order passed by the Family Court, Dharmapuri, in HMOP No.143 of 2016 is set aside and C.M.A.No.2578 of 2017 stands allowed. However, the appellant is directed to comply with the order passed in I.A.No.418 of 2016 in F.C.HMOP No.143 of 2016 within a period of six weeks from the date of receipt of a copy of this order. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

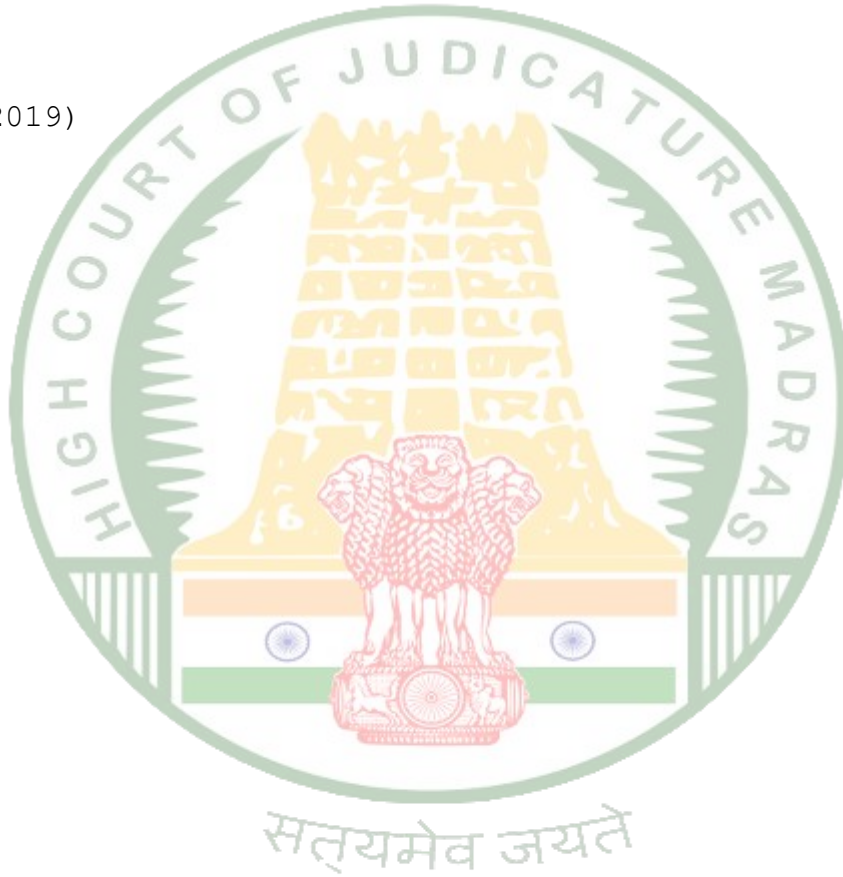
To:

The Judge
Family Court,
Dharmapuri.

+2 Ccs to Mr.Syed Izzath, Advocate sr 24162.

C.M.A. Nos.2578 & 2579 of 2017

VD(CO)
SP(13/06/2019)



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