

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.02.2019

CORAM:

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

CMA Nos. 668 & 669 of 2017

M.Gopi ... Appellant/Respondent/
Respondent in both appeals

Vs.

P.Sathyapriya ... Respondent/Petitioner/
Petitioner in both appeals

Prayer: Appeals filed under Section 28 of the Hindu Marriage Act, 1955 r/w Sec.19 of Family Courts Act, 1984 against the fair and decreetal order dated 15.02.2016 made in I.A. No. 2160 of 2013 and I.A. No.1074 of 2014 in O.P. No. 906 of 2013 on the file of learned Principal Family Court, Chennai.

For Appellant
(in both CMAs) : Mr.N.Manokaran
For Respondent
(in both CMAs) : No Appearance

JUDGMENT
(Delivered by M.M.Sundresh,J.)

Heard the counsel appearing for the appellant. Despite service of notice and name being printed in the cause list, none appears for the respondent.

2. These two appeals have been preferred against the interim order passed in two applications. One is with respect to the payment of the interim maintenance and the other is with respect to the return of jewels.

3. Learned counsel appearing for the appellant submitted that without giving an opportunity to the appellant, the order has been passed. Reliance has been made on the cause title of both the orders passed. In one of the cases, it has been stated as if the appellant (respondent therein) was present and in the other the appellant (respondent therein) was absent, though both the orders were passed on the very same date.

4. Learned counsel further submitted that pursuant to the direction of this Court, the admitted jewels of the respondent have been handed over. Similarly, 50% of the arrears have been deposited pursuant to the order of this Court. Therefore, considering the same, appropriate orders will have to be passed.

5. We perused the orders passed. We find that though counter affidavit has been filed by the respondent, none of the contentions raised by the appellant have been taken note of or discussed.

6. We find some force in submission made by the counsel appearing for the appellant on the question of non-hearing. The order passed in I.A.No.2160 of 2013 says that it has been passed in the presence of the appellant (respondent therein) whereas the order passed in I.A.No.1074 of 2014 says that the order has been passed in the absence of appellant (respondent therein), though they have been passed on the very same day.

7. Insofar as the admitted jewels are concerned, they have already been ordered to be returned and the learned counsel for the appellant also submitted to the said effect. Therefore, we are of the view that no further orders are required in CMA No.669 of 2017. Accordingly, the said appeal is closed. It is made clear that if nothing is required to be returned by the appellant, the same can be taken note of by the Family Court at the time of passing final order in H.M.O.P. No.906 of 2013, of course after hearing both the parties.

8. Insofar as CMA No.668 of 2017 is concerned, the amount deposited can be permitted to be withdrawn by the respondent which has not been done till now. Inasmuch as the respondent has not come forward to take the aforesaid amount deposited nor appeared before this Court, we are not inclined to remit the matter at this point of time, particularly, when the main original petition is pending for more than five years. However, we modify the order passed by the Court below by directing the appellant to pay a sum of Rs.10,000/- from February, 2019 onwards as interim arrangement. Accordingly, the appeal filed in CMA No.668 of 2017 stands disposed of.

9. Taking note of the pendency of the original petition for more than five years, we direct the Family Court, Chennai to dispose of the matter within a period of four months from the date of receipt of a copy of this order. We make it clear that it is for the Family Court to pass appropriate orders at the time of disposing of the main original petition with respect to the further alimony, which is inclusive of alimony or interim maintenance, liable to be given to the respondent from the date of deposit as directed by the Court below till the date of our order.

In the result, the appeals are disposed of. No costs. Consequently, connected CMP Nos. 3758 and 3759 of 2017 are closed.

Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

ssm

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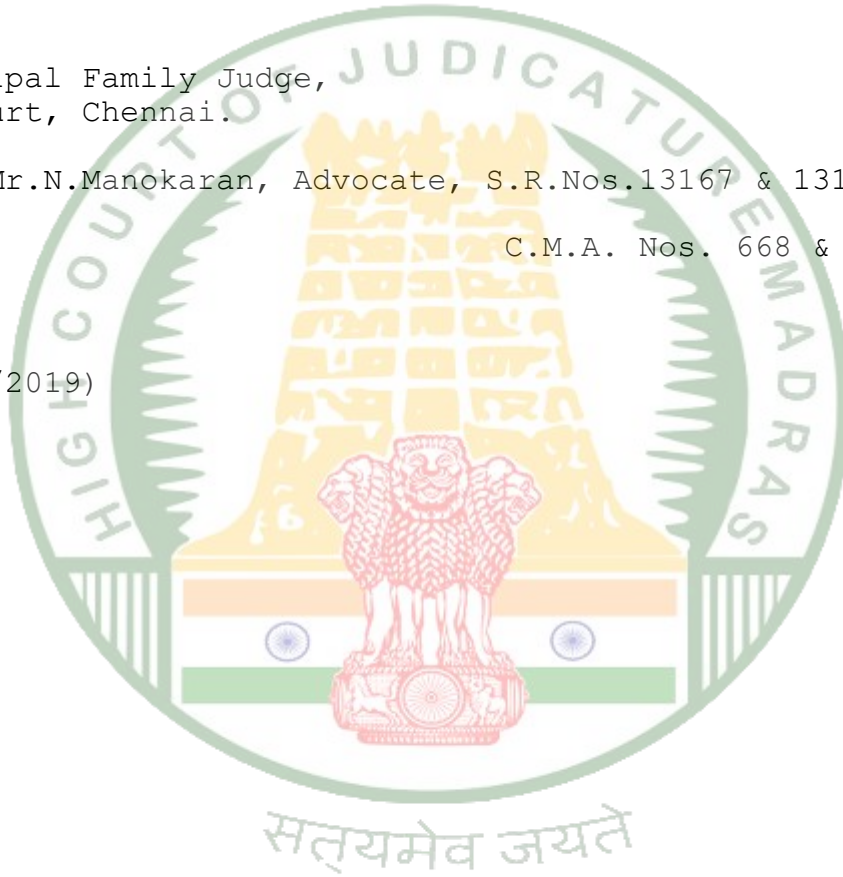
The Principal Family Judge,
Family Court, Chennai.

+2ccs to Mr.N.Manokaran, Advocate, S.R.Nos.13167 & 13168

C.M.A. Nos. 668 & 669 of 2017

PVS (CO)

RRS (28/05/2019)



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