

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Monday, the Fourth day of March Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE M.M.SUNDRESH

AND

THE HON`BLE MR JUSTICE C. SARAVANAN

CMP NO.18191 OF 2018

IN CMA.1500 OF 2018

RASIKA BALACHANDAR [PETITIONER]

Vs

KARTHIK NAGARAJ [RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order of payment out of the sum of Rs.80,00,000/- (Rupees eighty lakhs only) deposited by the respondent /appellant to the credit of OP no.84/2015, on the file of III Addl.Prl.Judge, Family court at Chennai (CMP.18191/2018) pending disposal of the above CMA.1500 OF 2018

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.THAGARAJAN, Advocate for the petitioner and of MR.ASHOK MENON, Advocate for the Respondent the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J.,)

This petition has been filed by the petitioner seeking payment out of the sum of Rs.80 lakhs deposited by the respondent/appellant in pursuance of the orders passed by this Court on the earlier occasion while considering the request for granting stay.

2. The petitioner herein is the divorced wife of the respondent. The appeal is of very limited scope qua the quantum directed to be paid. Thus, the divorce decree granted between the parties has become final.

3. Learned counsel appearing for the respondent/appellant raised a plea by placing reliance upon Section 25(3) of the Hindu Marriage Act, 1955.

4. At least for the purpose of deciding this petition, we are of the view that the said objection is not maintainable. Section 25(3) speaks about right of a party to approach the Court which granted the decree seeking modification, varying or rescinding the order passed on the grounds mentioned therein. Placing reliance upon the F.I.R given by the father of the petitioner, a contention has been raised that she was in relationship with the third party. Hence, we are of the view that the said objection cannot be countenanced, as F.I.R. at best can be a piece of evidence which requires appreciation. Admittedly, the petitioner is not the author of the F.I.R.

5. In such view of the matter, we are inclined to allow this petition by directing the petitioner to withdraw a sum of Rs.50 lakhs out of Rs.80 lakhs deposited by the respondent. However, we make it clear that the said withdrawal is subject to the result of the appeal. The remaining amount is directed to be deposited in a Nationalized Bank.

Post the appeal for final hearing on 04.06.2019.

-sd/-

04/03/2019

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE 3RD ADDITIONAL PRINCIPAL
JUDGE, FAMILY COURT, CHENNAI

+2 C.C. to M/S.R.THAGARAJAN Advocate Sr.No.3201

Order

in

CMP.18191/2018

IN CMA.1500/2018

Date :04/03/2019

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