

C.M.P.Nos.14030 & 14033 of 2020 in Tr.C.M.P.No.150 of 2020

T.RAJA, J.

Today two civil miscellaneous petitions filed by the respective learned counsel appearing for the parties have been taken up for hearing. C.M.P.No.14033 of 2020 has been filed by Mr.M.Sivajothi-Husband seeking to recall the order dated 21.8.2020 passed in Tr.C.M.P.No.150 of 2020 and the other C.M.P.No.14030 of 2020 has been filed by Mrs.Divya-Wife seeking to cancel the costs imposed against her husband in the order dated 21.8.2020 passed in Tr.C.M.P.No.150 of 2020.

2. Mr.S.M.Harikrishna, learned counsel appearing for Mr.M.Sivajothi-Husband stated that when the Tr.C.M.P.No.150 of 2020 was taken up for hearing on 21.8.2020, a wrong impression was given to this Court stating that the Husband has been repeatedly filing petition after petition so as to harass his Wife. Explaining further, learned counsel stated that although G.W.O.P.No.82 of 2019 was filed before the District Court, Tiruvallur seeking custody of his son, the H.M.O.P.No.190 of 2019 seeking for divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu

Marriage Act was filed much prior to that on 13.3.2019 on the file of the Sub Court, Poonamallee, therefore, no question of causing harassment or mental agony would arise in this case. He also stated that when the said H.M.O.P.No.190 of 2019 filed by the Husband was already pending, without bringing to the notice of this Court the said fact, Mrs.Divya filed the Tr.C.M.P.No.319 of 2019 seeking for withdrawal of the G.W.O.P.No.82 of 2019 from the file of the District Court, Tiruvallur and transfer the same to the file of the District Court, Tirunelveli and this Court, vide the order dated 20.9.2019 passed in Tr.C.M.P.No.319 of 2019, allowed the same and transferred the G.W.O.P.No.82 of 2019 from the file of the District Court, Tiruvallur to the file of the District Court, Tirunelveli, which has been now re-numbered as G.W.O.P.No.4 of 2020 and pending on the file of the District Court, Tirunelveli. However, Mrs.Divya again approached this Court with the Tr.C.M.P.No.150 of 2020 seeking for withdrawal of the said H.M.O.P.No.190 of 2019 from the file of the Sub Court, Poonamallee and transfer the same to the file of the Sub Court, Tirunelveli on the allegation that her Husband has filed the said petition subsequently for divorce to harass her, which is not correct. In view thereof, the order imposing costs of

Rs.25,000/- on the Husband may be recalled, failing which huge prejudice would be caused to both parties for arriving at the reunion.

3. Supporting the said contention, Mr.R.Rajesh Vivekananthan, learned counsel appearing for Mrs.Divya-Wife also stated that if the order imposing costs of Rs.25,000/- on the Husband is not recalled, that would cause some problem for settling and sorting out the issue.

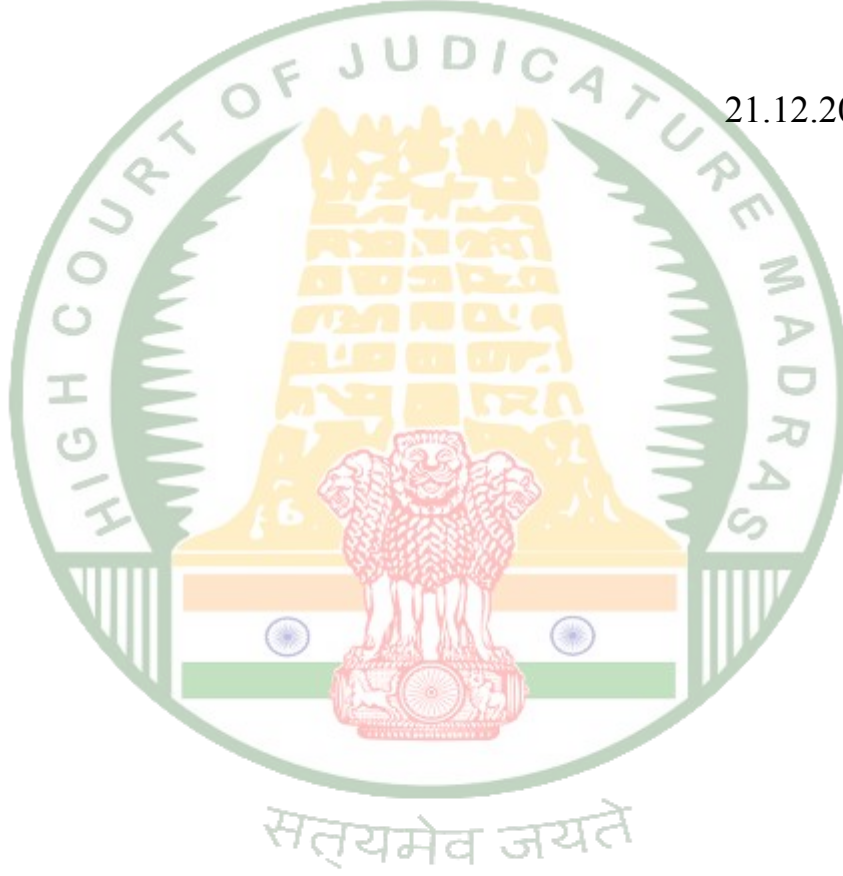
4. Having heard learned counsel for the parties, this Court could see that the re-numbered G.W.O.P.No.4 of 2020 seeking custody of the child is pending before the District Court, Tirunelveli, whereas the H.M.O.P.No.190 of 2019 was filed by the Husband seeking divorce before the Sub Court, Poonamallee as early as on 13.3.2019. However, when the order was passed by this Court in Tr.C.M.P.No.150 of 2020 on 21.8.2020, due to the inadvertent submission made by the learned counsel for the Wife, an impression was given that the Husband has subsequently filed the petition for divorce before the Sub Court, Poonamallee and in that context, while allowing the transfer plea, this Court imposed costs of Rs.25,000/- on the

Husband. Therefore, the order imposing costs of Rs.25,000/- on the Husband is liable to be recalled and accordingly, it is recalled. Now the re-numbered G.W.O.P.No.4 of 2020 seeking custody of the child is pending before the District Court, Tirunelveli and the H.M.O.P.No.190 of 2019 seeking divorce has been transferred to the file of the Sub Court, Tirunelveli. Mr.R.Rajesh Vivekananthan, learned counsel appearing for the Wife and Mr.S.M.Harikrishna, learned counsel appearing for the Husband jointly made a request for trying of both cases together by one Court. Considering the fact that both the parties, Husband and Wife are fighting for the custody of the child and also for divorce, it may not be advisable for both parties to litigate the matters before different Courts. Therefore, this Court, accepting their joint request, hereby withdraws the H.M.O.P.No.190 of 2019 from the file of the Sub Court, Tirunelveli and transfers the same to the file of the District Court, Tirunelveli. On such transfer, the learned District Judge, Tirunelveli is directed to take up both the G.W.O.P.No.4 of 2020 seeking custody of the child and the H.M.O.P.No.190 of 2019 seeking divorce together for joint trial and dispose of the same on their own merit in accordance with law, without being influenced by any of the observation

made by this Court in the order dated 21.8.2020 passed in Tr.C.M.P.No.150 of 2020. With this observation, C.M.P.No.14033 of 2020 is ordered accordingly. In view of the order passed in C.M.P.No.14033 of 2020, C.M.P.No.14030 of 2020 stands closed.

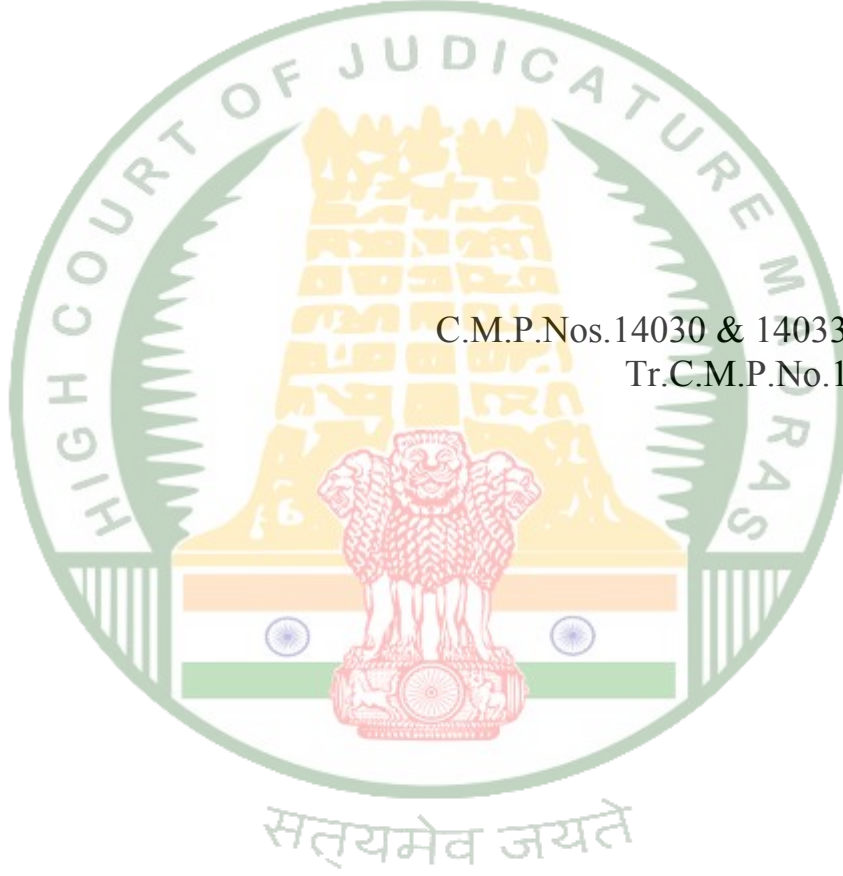
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