

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) Nos.1641 & 1642 of 2018
and
CMP Nos.8828 & 8829 of 2018

Dr.S.Selvakumar ... Petitioner in both CRPs

Vs

1. Savithri Selvakumar
2. Sahana Selvakumar
3. Siddarth Selvakumar ... Respondents in both CRPs

Common Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 18.04.2018 made in I.A.Nos.1958 & 1959 of 2015 in H.M.O.P.No.2357 of 2015 on the file of the Principal Family Court, Chennai.

For Petitioner : Mr.A.Ganesh (in both CRPs)
For R1 & R2 : Mr.V.Lakshminarayanan (in both CRPs)
For R3 : No appearance (in both CRPs)

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal order dated 18.04.2018 made in I.A.Nos.1958 & 1959 of 2015 in H.M.O.P.No.2357 of 2015 on the file of the Principal Family Court,

Chennai, thereby allowing the petitions to produce the petition mentioned documents.

2. The petitioner is the husband and the first respondent is the wife, second and third respondents are their children. The petitioner filed a petition for divorce on the ground of cruelty as against the first respondent herein. While pending the divorce petition, the respondents filed a petition for interim maintenance. Simultaneously, the respondents filed a petition to produce the statement of bank accounts from 01.01.2009 to 31.08.2015 and Income Tax Returns with Income Tax statement from 01.01.2009 to 31.08.2015. Both the petitions were allowed and aggrieved by the same, the present Civil Revision Petition filed by the petitioner.

3. While pending the divorce petition on the ground of cruelty, the respondents filed a separate suit for maintenance in O.S.No.181 of 2015. Pending the said suit, the respondents also filed interim maintenance petition in the divorce petition filed by the petitioner herein in I.A.No.1960 of 2015. The respondents also filed petitions in I.A.Nos.1958 & 1959 of

2015 for production of statement of accounts and also statement of income tax returns filed by the petitioner herein. The Court below partly allowed the petition in I.A.No.1960 of 2015 for interim maintenance and awarded a sum of Rs.20,000/- per month to the first respondent herein and Rs.12,000/- per month to the second respondent, totalling Rs.32,000/- per month and as far as the third respondent is concerned, he attained majority and his petition was withdrawn. Aggrieved by the same, the respondents filed an appeal before this Court in CMA.No.1213 of 2016 for enhancement of interim maintenance. This Court enhanced the interim maintenance from Rs.32,000/- to Rs.40,000/- per month payable by the petitioner herein. Unfortunately, the Court below failed to pass any order in I.A.Nos.1958 & 1959 of 2015, while ordering interim maintenance in I.A.No.1960 of 2015.

4. As aggrieved by the order passed by this Court in CMA No.1213 of 2016, the respondents preferred an appeal before the Hon'ble Supreme Court of India in S.L.P.No.34249 of 2017 and the Hon'ble Supreme Court of India dismissed the petition by an order dated 09.01.2018 and directed the Court below to conclude the divorce proceedings as far as

possible within the period of six months from the date of receipt of the copy of that order. Further observed that the impugned order may not preclude the contentions of the respondents herein at the stage of final order. Thereafter, by an order dated 10.01.2018, the Court below disposed both the applications as infructuous. Aggrieved by the same, the respondents again preferred a Civil Revision Petition before this Court in CRP Nos.990 & 991 of 2018. This Court set aside the order passed by the Court below and remanded back to the Trial Court to decide those applications on merits and in accordance with law. Accordingly, the Court below re-opened both the applications and allowed the same, thereby directed the petitioner to produce the documents, which were sought for by the respondents herein.

5. On perusal of the affidavit filed in support of the applications seeking production of statement of accounts and Income Tax returns from 01.01.2009 to 31.08.2015 revealed that in order to ascertain various source of income derived from the petitioner's hospital, professional income, income from his properties and income from other sources, the documents which are sought for by the respondents are just and necessary for

adjudication of the interim maintenance. As stated supra, the interim maintenance sought for by the respondents was partly allowed and the Court below ordered maintenance of Rs.32,000/- per month for respondents 1 and 2 herein and the same was enhanced by this Court to the tune of Rs.40,000/- per month. The said interim maintenance was confirmed by the Hon'ble Supreme Court of India by an order dated 09.01.2018. The only mistake committed by the Trial Court was that while passing an order in the interim maintenance petition, the present applications also included in the said order, since, these applications were filed only to ascertain the income of the petitioner herein to order for interim maintenance. Therefore, the Court below disposed the same and observed as follows :-

“Records perused. The scope of this petition as inferred from the contents of the affidavit is very much for adjudicating the petition in I.A.No.1960/2015. However, the predecessors of this Court has adjudicated that this petition could be taken up along with main case. But this Court considers that this petition and I.A.No.1960/2015 correlate each other. The petition in I.A.No.1960/2015 has already disposed off. Hence this petition goes infructuous. Petition is dismissed as

infructuous. No costs.”

7. Since, it was a non-speaking order, this Court remanded back to the Trial Court to decide those applications. Unfortunately, the Court below wrongly construed that the petition filed under Section 25 of the Hindu Marriage Act, seeking permanent alimony and maintenance and the same was allowed and directed the petitioner to produce the documents. Further observed that the suit in O.S.No.181 of 2015 is also pending for maintenance filed by the first respondent and the documents which are sought for by the first respondent are helpful to decide the said suit. Admittedly, the respondents herein filed a petition under Section 24 of the Hindu Marriage Act, claiming the interim maintenance till the disposal of the divorce petition filed by the petitioner herein. In the interim maintenance petition in I.A.No.1960 of 2015 already granted interim maintenance and the same was also confirmed by the Hon'ble Supreme Court of India. As stated supra, these applications were filed only to ascertain the income of the petitioner to fix the interim maintenance. Therefore, no purpose would be served for production of statement of accounts and the Income Tax Returns from 01.01.2009 to 31.08.2015, to

decide the divorce petition filed on the ground of cruelty.

8. In view of the above, the order dated 18.04.2018 made in I.A.Nos.1958 & 1959 of 2015 in H.M.O.P.No.2357 of 2015 on the file of the Principal Family Court, Chennai, is hereby set aside and these Civil Revision Petitions are allowed. No order as to costs. Consequently, connected Miscellaneous Petitions are closed.

01.07.2021

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Index: Yes/No

Internet: Yes/No

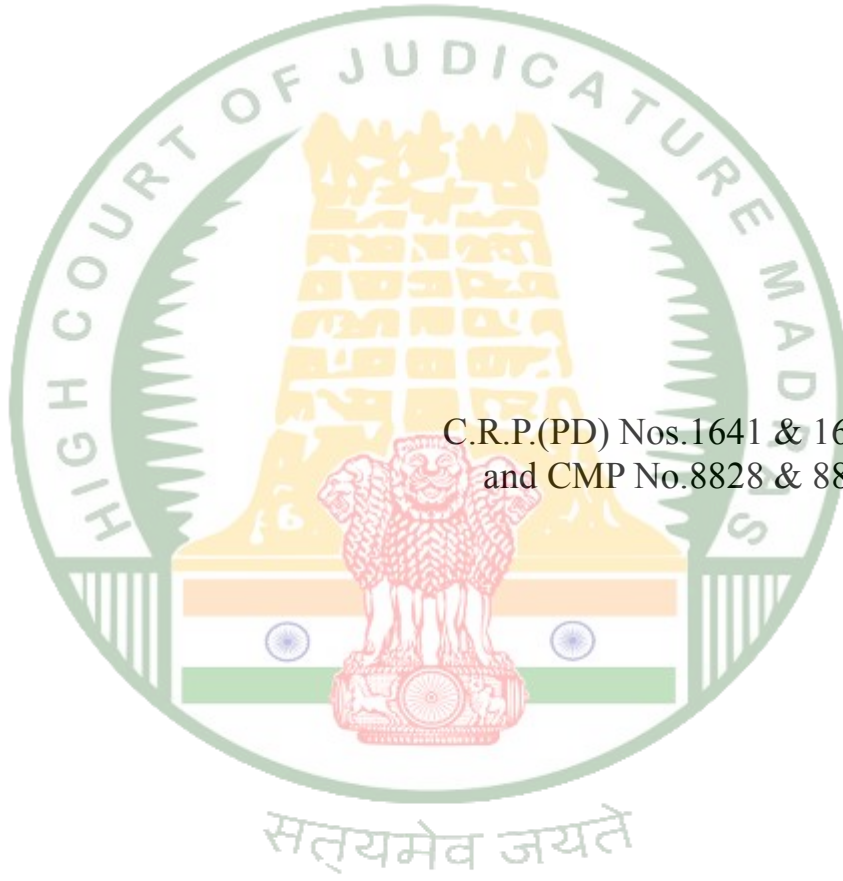
Speaking Order: Yes/No

To

The Principal Family Judge,
Chennai.

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G.K.ILANTHIRAIYAN,J.



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