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C.M.A.Nos.927 and 928 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.Nos.927 and 928 of 2024
and
C.M.P.No.8627 of 2024

Karthik Nagarajan
Rep. by his General Power of Attorney Agent
T.B.Nagarajan

[Cause title accepted vide Court order dated
04.04.2024 made in C.M.P.Nos.6862, 6872,
8076 and 8080 of 2024]

... Appellant in both the CMAs

Vs.

Rasika Balachander

... Respondent in both the CMAs

Common Prayer: Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act read with Section 96 of the Code of Civil Procedure, 1908 read with Section 28 of the Hindu Marriage Act, to set aside the fair and decretal order passed in I.A.No.1 of 2019 in I.A.No.2648 of 2016 in O.P.No.84 of 2015 and I.A.No.4 of 2023 in O.P.No.84 of 2015 dated 15.12.2023 on the file of the III Additional Principal Family Court at



Chennai.

C.M.A.Nos.927 and 928 of 2



For Appellant : Mr.C.Jagdish
for Mr.R.Jayaprakash
For Respondent : Mr.R.Thiagarajan

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

These appeals are filed against the order of the learned III Additional Principal Family Judge, Chennai dismissing the applications in I.A.Nos.1 of 2019 and 4 of 2023 filed by the appellant purportedly under Section 25(3) of the Hindu Marriage Act, 1952.

2. The marriage between the parties was dissolved by an order of the Family Court made in O.P.No.84 of 2015 dated 10.10.2017. In and by the said order the learned Family Judge had directed the appellant to pay a sum of Rs.2,75,00,000/- towards permanent alimony, which was in two parts Rs.1,60,00,000/- was towards permanent alimony and Rs.1,15,00,000/- was towards reimbursement of the expenses incurred by the wife during her stay in the matrimonial home. Apart from the above, the husband was also



directed to release his rights over the immovable property, a residential property situate in Bangalore.

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3. While accepting the decree for divorce, the husband challenged the direction to pay the permanent alimony and the order directing release of his rights in the property.

4. A Division Bench of this Court by its order dated 31.10.2022 upheld the order directing release of the rights in the property and reduced the quantum of permanent alimony granted to Rs.1,28,00,000/- while recording a finding that a spouse is not entitled to seek refund of the amount contributed by her while they were living together in the matrimonial home. On the said conclusion, the order challenging reimbursement of Rs.1,15,00,000/- was set aside and the total amount of permanent alimony granted at Rs.1,60,00,000/- was reduced to Rs.1,28,00,000/-.

5. Even during the pendency of the appeal, the husband had filed an application under Order 41 Rule 27 of the Code of Civil Procedure seeking to introduce evidence to show that the wife was in live-in relationship with another person and the said fact has been admitted in certain proceedings



before this Court and therefore he wanted a wholesale variance of the order granting permanent alimony. The Division Bench however felt that such an exercise cannot be carried out in an appeal and it is open to the appellant/husband to seek modification of the order under Section 25(3) of the Hindu Marriage Act.

6. On the said conclusion, the Division Bench disposed of the appeal, while reserving liberty to the husband to seek modification of the order granting permanent alimony under Section 25(3) of the Hindu Marriage Act. Consequent upon such dismissal, the husband has come up with the instant application in I.A.No.1 of 2019 seeking variance of the order of the Division bench.

7. We have heard Mr.C.Jagdish, learned counsel appearing for the appellant and Mr.R.Thiagarajan, learned counsel appearing for the respondent.

8. No doubt, the Court has the power to vary the order granting permanent alimony upon proof of certain facts. In the case on hand, when



we perused the order of the trial Court, we find that no evidence has been placed by the parties before the Court. The learned Judge had rightly rejected the application for varying the order granting interim maintenance on the conclusion that the appellant has not produced any conclusive proof of his claim that the wife is living with another person. Though the Court has referred to certain documents, we find that those documents were not made part of the record before the Family Court.

9. Hence, we do not find any reason to interfere with the order of the III Additional Principal Family Judge, Chennai. The appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) (R.S.V., J.)
22.04.2024

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Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order/Non-Speaking order

To

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The III Additional Principal Family Judge,
Chennai.

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R.SUBRAMANIAN, J.
and
R.SAKTHIVEL, J.

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