

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED :31.08.2020

DATE ON WHICH PRONOUNCED :15.09.2020

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM**

C.M.A.(MD).No.310 of 2020

and

C.M.P.(MD).No.4035 of 2020

1.Gomathi

2.Minor S.Surya

: Appellants /Respondents

(Minor 2nd appellant rep. by his mother,
the 1st appellant herein)

Vs.

Sacraties

: Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Courts Act, 1984, against the fair and decretal order dated 03.10.2018 passed in I.A.No.173 of 2016 in H.M.O.P.No.35 of 2014 on the file of the Family Court, Tiruchirapalli.

For Appellants : Mr.M.P.Senthil

For Respondent : Mr.S.Jeyavel

JUDGMENT

(Judgment of the Court was delivered by P.RAJAMANICKAM, J.)

This Civil Miscellaneous Appeal has been filed by the petitioners/appellants against the order passed by the Family Court, Tiruchirapalli in I.A.No.173/2016 in H.M.O.P.No.35 of 2014, dated 03.10.2018.

2. The respondent herein, who is the husband of the first appellant and father of the second appellant herein, has filed H.M.O.P.No.227/2010 on the file of the Sub-Judge, Tiruchirapalli, seeking divorce against the first appellant herein on the ground of cruelty. The said H.M.O.P was transferred to the Court of Family Judge, Tiruchirapalli and renumbered as H.M.O.P.No.35 of 2014. During pendency of the said petition, the appellants herein have filed an application in I.A.No.252 of 2015 under Section 7(1) of the Family Courts Act r/w Section 25 of the Hindu Marriage Act, 1955 and Sections 20 and 26 of the Protection of Women from Domestic Violence Act, 2005 (23 of 2005) to direct the respondent to pay a sum of Rs.10,000/- to the first appellant herein and Rs. 5,000/- to the second appellant herein towards monthly maintenance, education, medical expenses or any other lump sum by way of permanent alimony to the first appellant herein. They also filed another application in I.A.No.173/2016

under Section 24 of the Hindu Marriage Act, 1955 r/w Sections 20 and 26 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005) (Herein after referred as 'DV Act') to direct the respondent to pay a sum of Rs.7,500/- to the first appellant herein for her maintenance and medical expenses and Rs. 5,000/- to the second appellant herein for his maintenance and educational expenses till orders passed in I.A.No.252 of 2015.

3.The respondent herein opposed the aforesaid petitions by filing counters.

4. During enquiry in I.A.No.173 of 2016, on either side, no oral evidence has been adduced. On the side of the petitioners, Exs.P.1 to P.5 were marked as exhibits. On the side of the respondent, Exs.R.1 to R.5 were marked as exhibits.

5.The learned Family Court Judge, Tiruchirapalli, after considering the materials placed before him found that since the petitioners herein have already got an order for maintenance in their favour by invoking the provision under Section 20 of D.V Act in D.V.C.No.107 of 2016 on the file of the Additional Mahila Court, Tiruchirapalli, they are precluded from filing another

petition seeking the relief of interim maintenance by invoking the very same provision of Section 20 of D.V Act. Accordingly, he dismissed I.A.No.173 of 2016 by the order dated 03.10.2018. Feeling aggrieved, the petitioners have filed the present Civil Miscellaneous Appeal.

6.Heard Mr.M.P.Senthil, learned counsel for the appellants/petitioners and Mr.S.Jeyavel, learned counsel for the respondent.

7.The points for consideration in this civil miscellaneous appeal are as follows:-

i)Whether the petitioners are precluded from seeking interim maintenance by invoking the Provisions of Section 24 of the Hindu Marriage Act r/w Sections 20 and 26 of Protection of Women from Domestic Violence Act on the ground that they already got order for payment of maintenance in D.V proceedings i.e., in D.V.C.No.107 of 2016?

ii)Whether the learned Family Court Judge was right in dismissing the I.A.No.173/2016 in H.M.O.P.No.35/2014?

8. Point Nos.1 & 2:-

The learned counsel for the appellants has submitted that the learned Family Court Judge erred in dismissing the application for interim maintenance without adverting to the circumstances under which the petitioners have filed the said application. He further submitted that the learned Family Court Judge failed to consider that as per Section 26 of the DV Act, any relief available under Sections 18 to 22 of the DV Act may also be sought in any legal proceeding, before a Civil Court, Family Court or a Criminal Court. He further submitted that the learned Family Court Judge failed to consider that as per Section 24 of the Hindu Marriage Act, the first appellant is entitled to seek interim maintenance in the divorce proceedings. He further submitted that neither the DV Act nor the Hindu Marriage Act prohibits seeking interim maintenance as additional relief. He further submitted that if any amount was awarded towards maintenance in any of the proceedings, the same has to be taken into account in the subsequent proceedings and after considering the same, if the Court finds that the maintenance already awarded in the previous proceedings is not sufficient, it can direct the respondent to pay additional amount towards maintenance or if the Court finds that maintenance already awarded in the previous proceedings itself is sufficient, it can dismiss the

petition, but in stead of doing so, the Court should not have dismissed the petition on the ground that already maintenance was awarded in the previous proceedings. He further submitted that since the right to claim maintenance is a basic right, the learned Family Court Judge ought not to have dismissed the appellants' application and therefore, he prayed to allow the appeal and set aside the orders passed by the learned Family Court Judge and allow the I.A.No.173 of 2016 in H.M.O.P.No.35 of 2014, on the file of the Family Court, Tiruchirappalli.

9.Per contra, the learned counsel appearing for the respondent has submitted that the first petitioner has filed an application under Section 12 of the DV Act in S.T.C.No.644/2009 on the file of the Judicial Magistrate No.6, Tiruchirapalli, seeking reliefs under Sections 18, 19 and 20 of the DV Act. He further submitted that the said application was subsequently transferred to the Chief Judicial Magistrate, Tiruchirapalli and renumbered as S.T.C.No.2/2015 and thereafter, it was again transferred to Additional Mahila Court, Tiruchirappalli and renumbered as D.V.C.No.107/2016. He further submitted that the learned Additional Mahila Court, Tiruchirapalli, taking into consideration the first appellant and her children are residing in respondent's house and salary of the respondent, by the order dated 29.12.2016 in D.V.C.No.

107/2016, has directed the respondent herein to pay a sum of Rs.3,000/- towards maintenance to the first petitioner per month and Rs.2,000/- towards maintenance per month to each of her minor sons and totally, a sum of Rs. 7,000/- was awarded and the said amount should be paid from the date of filing of the petition. He further submitted that challenging the said order, the respondent has filed CrI.A.No.15 of 2017 on the file of the Principal Sessions Court, Tiruchirapalli and the learned Principal Sessions Judge, by the judgment dated, 16.08.2017, has modified the order passed by the trial Court by holding that maintenance amount of Rs.7,000/- will be payable only from the date of order of the trial Court namely 29.12.2016 and not from the date of petition before the trial court namely 05.12.2008. He further submitted that challenging the said portion of the order, the first appellant has filed CrI.R.C.(MD).No. 815/2017 before this Court and this Court, by the order dated 27.03.2018, has allowed the said criminal revision setting aside the order passed by the learned Principal Sessions Judge and restored the order passed by the learned Trial Court and hence, the order passed by the learned Judicial Magistrate/Additional Mahila Court, Tiruchirapalli in D.V.C.No.107/2016 with regard to the maintenance has become final. He further submitted that if the petitioners felt that the order passed by the learned Additional Mahila Court in D.V.C.No. 107/2016 requires alteration or modification, due to change of circumstances,

they have to file proper application before the same Court by invoking Section 25(2) of the DV Act and in stead of that, they cannot file another application before the another Court for the same relief. He further submitted that filing of the multiple applications seeking maintenance before the different forums would amount to abuse of process of Court and therefore, he prayed to dismiss the Civil Miscellaneous Appeal.

10.This Court has carefully considered the rival submissions made on either side and perused the documents available on record carefully.

11.It is seen from the typed set of papers filed by the appellants that the first appellant herein has filed an application under Section 12 of the DV Act in S.T.C.No.644 of 2009 on the file of the Judicial Magistrate No.6, Tiruchirapalli, seeking certain reliefs including maintenance under Sections 18, 19 and 20 of the DV Act. The said case was subsequently transferred to the Chief Judicial Magistrate Court, Tiruchirapalli and renumbered as S.T.C.No. 2/2015 and thereafter, it was again transferred to the Additional Mahila Court, Tiruchirapalli and renumbered as D.V.C.No.107/2016. During pendency of the said proceedings under the DV Act, the respondent herein has filed H.M.O.P.No.227 of 2010 on the file of the Sub Court, Tiruchirapalli against the

first appellant herein seeking divorce on the ground of cruelty and the said petition was subsequently transferred to the Family Court, Tiruchirapalli and renumbered as H.M.O.P.No.35/2014 and the same is still pending. Whiles, the learned Judicial Magistrate /Additional Mahila Court, Tiruchirapalli, by the order dated 29.12.2016, has allowed the D.V.C.No.107 of 2016 and granted the reliefs under Sections 18, 19 and 20 of DV Act and also directed the respondent herein to pay Rs.3,000/- per month to the first appellant and Rs.2,000/- each per month to her two children (totally a sum of Rs.7,000/- per month) towards maintenance from the date of petition. Challenging the said order, the respondent herein has filed CrI.A.No.15 of 2017 before the Sessions Court, Tiruchirapalli and the learned Principal Sessions Judge by the judgment dated 16.08.2017 has modified the order passed by the trial court by holding that the maintenance amount of Rs.7,000/- per month will be payable only from the date of order of the trial court, namely 29.12.2016 and not from the date of petition before the trial court namely 05.12.2008. Challenging the said portion of the order, the first appellant herein has filed CrI.R.C.(MD).No.815 of 2017 before this Court. This Court, by the order dated 27.03.2018 has allowed the said criminal revision case and set aside the judgment passed by the learned Principal Sessions Judge in CrI.A.No.15 of 2017 and restored the order passed by the learned Judicial Magistrate/Additional Mahila Court, Tiruchirapalli in

D.V.C.No.107 of 2016, dated 29.12.2016. So, the order passed by the learned Additional Mahila Court, Tiruchirapalli in D.V.C.No.107 of 2016 has become final.

12.It appears that during pendency of the DV proceedings, the appellants herein have filed an application in I.A.No.252/2015 under Section 7(1) of the Family Courts Act r/w Section 25 of the Hindu Marriage Act and Sections 20 and 26 of the DV Act to direct the respondent to pay a sum of Rs. 10,000/- for the first appellant herein and Rs.5,000/- for the second appellant herein towards monthly maintenance, education and medical expenses or any other lump sum by way of permanent alimony for the first appellant herein.

13.At this juncture, Section 25 of the Hindu Marriage Act, 1955, may be extracted as under:

“25.Permanent alimony and maintenance

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall [***] pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other

property, if any, the income and other property of the applicant [****], the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].”

14. So, it is clear that Section 25 (1) of the said Act empowers the Court, while passing any decree, to consider the status of the parties and whether any arrangement needs to be made in favour of the wife or the husband; and by way of permanent alimony, an order granting maintenance can also be passed by the Court. It is also clear that at any time, subsequent to the passing of decree also, the Court can order for granting maintenance on application made to it by either wife or the husband.

15. But, in this case, the appellants herein have filed I.A.No.252/2015, seeking permanent alimony even during pendency of the H.M.O.P. They also filed another application in I.A.No.173/2016 under Sections 24 of the Hindu Marriage Act r/w Sections 20 and 26 of the DV Act to direct the respondent to pay a sum of Rs.7,500/- for the first appellant herein towards her maintenance and medical expenses and Rs.5,000/- for the second appellant herein towards monthly maintenance and educational expenses till suitable orders are passed in I.A.No.252/2015. In the affidavit filed in support of I.A.No.173/2016, the first appellant herein has stated that when arguments were advanced in I.A.No. 252/2015, on 11.05.2016, it was raised by the Court that she has sought for permanent alimony in that application and it cannot be taken up as an interim measure and directed the parties to take up that application along with main case. Further, she has stated that though it was represented by her that the relief sought for in I.A.No.252 of 2015 claimed as permanent alimony, it can be restricted to an interim alimony and when she was prepared to make an endorsement to that extent in that application, the trial court was not inclined to entertain her plea and opined to take up that application viz., I.A.No.252 of 2015 along with I.A.No.251/2015 (Compensation application) and main application jointly. She further averred that since she and her children are striving hard to meet both ends, she filed I.A.No.173 of 2016 seeking interim

maintenance.

16.As already pointed out that as per Section 25(1) of the Hindu Marriage Act, 1955, the Court is empowered to pass order with regard to permanent alimony at the time of passing any decree in the H.M.O.P. If the Court did not exercise the said power and grant permanent alimony at the time of passing a decree in H.M.O.P, subsequently also can grant alimony on application filed by either wife or husband. Therefore, the application in I.A.No.252/2015 itself is misconceived. Under the said circumstances, the application in I.A.No.173 of 2016 seeking interim maintenance till the disposal of I.A.No.252/2015 is also misconceived. So, the application in I.A.No.173 of 2016 as framed is not maintainable.

17.Even assuming that the application in I.A.No.173 of 2016 has to be read that it was filed seeking interim maintenance till the disposal of main H.M.O.P, even then also, the said petition is not maintainable, because the said relief is only an interim relief. Admittedly, already, the first appellant has filed an application under Section 12 of the DV Act seeking reliefs under Sections 18, 19 and 20 of the DV Act for herself and for her two minor sons in STC.No. 644/2009 on the file of the Judicial Magistrate No.6, Tiruchirapalli and

subsequently, the same was transferred to the Court of Chief Judicial Magistrate, Tiruchirapalli and renumbered as STC.No.2 of 2015 and thereafter, it was again transferred to the Additional Mahila Court, Tiruchirapalli and renumbered as D.V.C.No.107 of 2016 and in the said proceedings, the learned Judicial Magistrate/ Additional Mahila Court, Tiruchirapalli, by the order, dated 29.07.2016 has allowed the said application and granted protection order and also directed the respondent to pay Rs.3,000/- per month to the first appellant and Rs.2,000/- each per month to her two children (Totally Rs.7,000/- per month) towards maintenance from the date of petition. Challenging the said order, the respondent has filed CrI.A.No.15/17 before the Sessions Court, Tiruchirapalli and the learned Principal Sessions Judge, by the judgment dated 16.08.2017 has modified the order passed by the trial court by holding that the maintenance amount of Rs.7,000/- will be payable only from the date of order of the trial court namely 29.12.2016 and not from the date of petition before the trial court namely 05.12.2008. Challenging the said portion of the order alone, the first appellant herein has filed CrI.R.C.(MD).No.815/2017 before this Court. This Court, by the order dated 27.03.2018 has allowed the said criminal revision case and set aside the judgment passed by the learned Principal Sessions Judge, Tiruchirapalli in CrI.A.No.15/17, dated 16.08.2017 and restored the order passed by the learned Chief Judicial Magistrate/Additional Mahila Court,

Tiruchirapalli in D.V.C.No.107/2016, dated 29.12.2016. If the first appellant herein felt that the maintenance awarded by the learned Judicial Magistrate/Additional Mahila Court, Tiruchirapalli in D.V.C.No.107 of 2016 is not adequate, she would have filed an appeal before the Sessions Court, but she has not filed any appeal. On the contrary, it was only the respondent has filed an appeal against the order of the learned Additional Mahila Court, Tiruchirapalli. So, it appears that the appellants did not have any grievance with regard to the maintenance amount awarded by the learned Judicial Magistrate/Additional Mahila Court, Tiruchirapalli in D.V.C.No.107/2016. The order passed by the learned Judicial Magistrate/Additional Mahila Court, Tiruchirappalli in D.V.C.No.107/2016 under Section 20 of DV Act is permanent in nature, whereas, the relief asked by the petitioners in I.A.No.173/2016 in H.M.O.P.No.35 of 2014 is only an interim relief. Therefore, this Court is of the view that they cannot seek interim relief, after getting permanent relief.

18.At this juncture, it would be relevant to refer to the decision in **Rakesh Malhotra Vs Krishna Malhotra** (MANU/SC/0338/2020 : 2020 (1) RCR (Criminal) 1019), wherein, in a matrimonial proceeding initiated by the wife seeking dissolution of marriage under Section 13(1) (i-a) & (i-b) of the Hindu Marriage Act, 1955, a decree for dissolution was passed by the Court of

First Additional District Judge, Vidisha (M.P) on 20.02.2013 and also passed an order for granting permanent alimony. Some time, in the year 2005, an application seeking maintenance under Section 125 of Cr.P.C was preferred by the wife and the same was dismissed by the concerned Court by the order dated 30.06.2014. The wife challenged the said order by way of criminal revision before the High Court. The High Court by the order dated 14.12.2017 has allowed the revision and directed the husband to pay a sum of Rs.5,000/- per month towards maintenance. Challenging the said order, the husband has filed an appeal before the Honourable Supreme Court. The Hon'ble Supreme Court has held that since the basic order was passed by the concerned court under Section 25(1) of the Hindu Marriage Act, by very nature, the order of modification / variation can also be passed by the concerned court exercising power under Section 25(2) or 25(3) of the said Act. It also held that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance and finally set aside the order passed by the High Court. The relevant portion of the said decision is extracted hereunder:-

“Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical sequittor would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where

considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.”

19.Though the aforesaid decision has been rendered by interpreting the provisions of Section 125 of Cr.P.C and Section 25 of the Hindu Marriage Act, the law laid down in the said decision will squarely apply to this case also.

20.In this case, as already pointed out, the appellants herein got an order for payment of maintenance in the DV proceedings under Section 20 of the DV Act and the said relief is permanent in nature. If the appellants feel that due to change of circumstances, the said order requires modification or alteration, they can very well approach the same Court and get appropriate relief by invoking Section 25(2) of the DV Act or they can request the Family Court to exercise the power under Section 25(1) of the Hindu Marriage Act at the time of passing a decree in the H.M.O.P or they can file a regular suit and ask for charge over the property and that is most secured one. In stead of that, they cannot file another application before the another forum that too in the nature of

interim relief.

21. Since the petitioners have filed I.A.No.173 of 2016 under Section 26 of the DV Act also, it is relevant to extract the said provision.

“26. Relief in other suits and legal proceedings.- (1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”.

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22. A bare perusal of the aforesaid provision would show that the aggrieved person may also seek any relief under Sections 18 to 22 of DV Act in any legal proceedings before a Civil Court/Family Court or Criminal Court as additional reliefs. As per the Sub-Section (3) of Section 26 of the DV Act, in

case, any relief has been obtained by the aggrieved person, in any proceedings, other than a proceeding under the DV Act, she shall be bound to inform the Magistrate of the grant of such relief. So, it is clear that as per Section 26(1) of the DV Act, the reliefs under Sections 18 to 22 of DV Act should have been asked before filing petition under Section 12 of the DV Act before the concerned Magistrate. If any such petition filed and if any relief is obtained, then only, aggrieved person can inform the said fact to the Magistrate, at the time of disposal of the application under Section 12 of the DV Act, but the reversed procedure is not prescribed. In this case, the petitioner already got an order in the petition properly filed under Section 12 of the DV Act before the Additional Mahila Court, Tiruchirappalli and that being so, they are not entitled to file petition before the Family Court by invoking the provision under Section 26(1) of the DV Act, seeking interim relief. Therefore, this Court is of the view that the learned Family Court Judge has rightly dismissed the application in I.A.No.173 of 2016. Hence, this Civil Miscellaneous Appeal is liable to be dismissed. Accordingly, the points 1 & 2 are answered against the appellants.

23. In the result, this Civil Miscellaneous Appeal is dismissed, confirming order dated 03.10.2018 passed by the learned Judge, Family Court, Tiruchirappalli in I.A.No.173 of 2016 in H.M.O.P.No.35 of 2014. No costs. It is

open to the appellants to file petition under Section 25(2) of the DV Act for modification/variation before the Additional Mahila Court, Tiruchirappalli or they can request the Family Court to exercise the power under Section 25(1) of the Hindu Marriage Act at the time of passing a decree in H.M.O.P.No.35 of 2014 or they can file a regular suit and ask for charge over the property, if they so advised. Consequently, connected miscellaneous petition is also dismissed.

(M.S.N.J.,)

(P.R.M.J.,)

15.09.2020

Index :yes/No
Internet :yes
VS

To

1. The Family Court,
Tiruchirapalli.
2. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

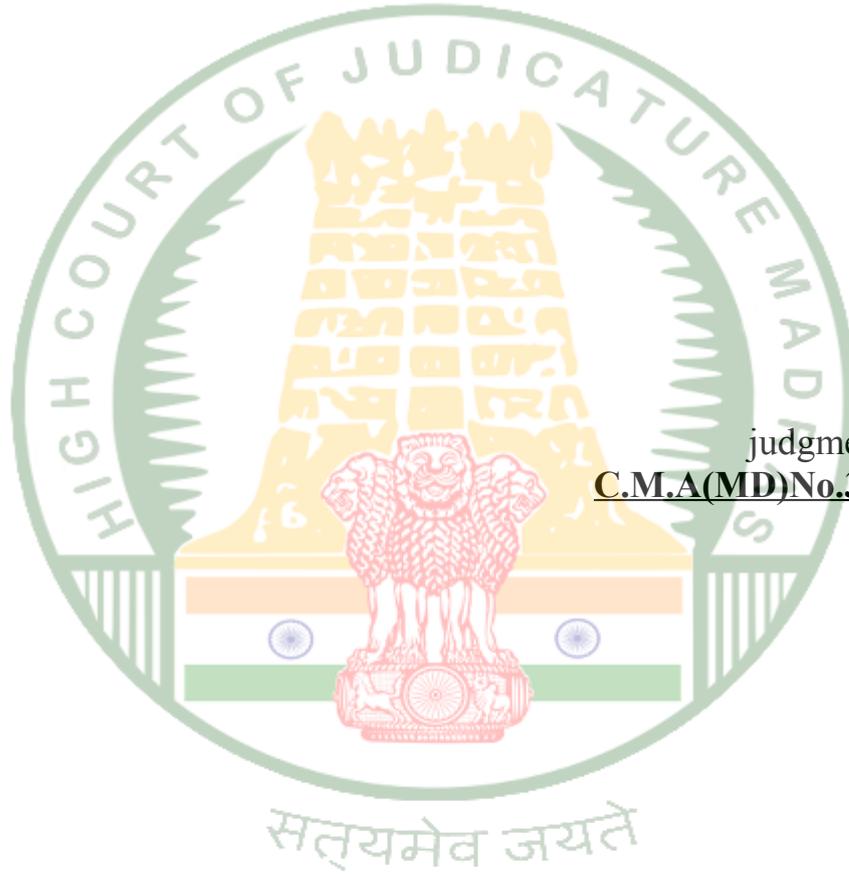
Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

C.M.A(MD)No.310 of 2020

**M.SATHYANARAYANAN,J.
AND
P.RAJAMANICKAM,J.**

Vs



judgment made in
C.M.A(MD)No.310 of 2020

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