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CRP (MD) No.1462 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.07.2023
Pronounced on	10.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.1462 of 2023

and

CMP(MD)No.7293 of 2023

1.M.Selvakumar

2.Manoharan

3.Meenakshi

4.Nithya

... Petitioners

Vs.

1.S.Raja Rajeshwari

2.Aiswarya

3.Aradhana

... Respondents

(First respondent is the guardian for R2 & R3)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records in pursuant to the order of dismissal dated 28.04.2023 passed by the learned Additional District Judge, Thenkasi, in Cr.M.P.No.335 of 2023 in Crl.A.No.36 of 2023 and to set aside the same.

For Petitioners : Mr.Karunanithi
for Mr.K.Sundaravel



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For Respondents : Mr.T.Govinda Samy

ORDER

The above civil revision petition is preferred as against the order dated 28.04.2023 passed in CrI.M.P.No.355 of 2023 in CrI.A(MD)No.36 of 2023 by the learned Additional District Judge, Tenkasi.

2. According to the revision petitioners, the first respondent/wife filed a petition under the Domestic Violence Act in DVC No.1 of 2019 before the learned Judicial Magistrate, Tenkasi. The learned Judicial Magistrate granted various reliefs to the respondents, against which, the petitioners herein filed CrI.A.No.36 of 2023 before the Additional District Court, Tenkasi and also filed CrI.M.P.No.335 of 2023 to stay the order of the learned Judicial Magistrate. However, the learned Additional District Judge, Tenkasi, dismissed the above said petition in CrI.MP.No.355/2023 Against which, the present revision is preferred.



3. It is submitted by the learned counsel for the petitioners that the respondents themselves have claimed only Rs.10,000/- as maintenance for each children. However the learned Judicial Magistrate granted maintenance double, claim made by the wife, which is totally unfair and unethical. Hence, the petitioners preferred the appeal in CrI.A.No.36 of 2023 against the order passed by the learned Judicial Magistrate, Tenkasi and also filed stay petition to stay the order of the learned Judicial Magistrate. But the learned Additional District Judge dismissed the stay petition by stating that there is no urgency to stay the operation of the order passed by the learned Judicial Magistrate and also on the ground that the learned counsel appearing for the respective party did not state whether any execution petition was filed by the respondents.

4. The further contention of the learned counsel for the revision petitioners is that the first petitioner is the husband of the first respondent and the petitioners 2 and 3 are the parents of the first petitioner and the fourth petitioner is the sister of the first petitioner. It is submitted that the first petitioner is the only earning member in the family and he had incurred a loss



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of Rs.15 lakhs by purchasing a house property, which was auctioned due to non-payment of installments. It is further stated that the first respondent/wife is a Teacher and earning a sum of Rs.1,00,000/- per month. Therefore, the first respondent will not find any difficulty to maintain the minor children. It is further submitted that in DVC No.1 of 2019, the respondents claimed a sum of Rs.10,000/- each as maintenance. But the learned Judicial Magistrate ordered a sum of Rs.20,000/- each to the respondents 2 and 3 and a sum of Rs.20,00,000/- as compensation which is unfair. Hence, the petitioners preferred the appeal before the Additional District Court, Tenkasi and also filed a stay petition, which was dismissed. Against which, the present civil revision petition is preferred. Since there are arguable points to be considered, the learned Additional District Judge ought to have allowed the stay petition in the interest of justice. Therefore, the order passed in Crl.M.P.No.355 of 2023 is liable to be set aside.

5. The learned counsel for the respondents would submit that the learned Judicial Magistrate has power to enhance the maintenance. Considering the materials available on records, the learned Judicial



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Magistrate has rightly awarded the maintenance amount, which calls for no interference.

6. Heard on both side and records perused.

7. The first petitioner is the husband and the petitioners 2 to 4 are the in-laws of the first respondent herein. The first respondent is the wife of the first petitioner and the respondents 2 and 3 are the minor children of the first petitioner and the first respondent. The respondents filed DVC No.1 of 2019 before the Judicial Magistrate Court, Tenkasi. By an order dated 16.12.2022, the learned Judicial Magistrate disposed the said DVC petition with the following directions:-

“46(i). 1ம் மனுதாரர் பணிபுரியும் கல்வி அலுவலகத்தில் அல்லது அவரது வீட்டில் 1, 2, 3, 5 எதிர்மனுதாரர்கள் அல்லது அவரைச் சார்ந்த நபர்கள் நேரடியாகவோ, மறைவாகவோ, வாய்மொழியாகவோ, எழுத்து மூலமாகவோ எந்தவித தொந்தரவும் செய்யக்கூடாது என்றும், அதேபோல், 2, 3ம் மனுதாரர்களை அவர்கள் படிக்கும் பள்ளியிலோ அல்லது 1ம் மனுதாரருடன் வாழ்ந்து வரும் வீட்டிலோ 1, 2, 3, 5 எதிர்மனுதாரர்கள் அல்லது அவரைச் சார்ந்த நபர்கள் நேரடியாகவோ, மறைமுகமாகவோ, வாய்மொழியாகவோ, எழுத்து மூலமாகவோ எந்தவித தொந்தரவும்



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செய்யக்கூடாது என்றும் உத்தரவிடப்படுகிறது.

46(ii). 2, 3ம் மனுதாரர்களுக்கு பராமரிப்பு செலவுக்கு மாதம் தலா ரூ.20,000/- 1ம் எதிர்மனுதாரர் மனுத் தேதியான 19.12.2018லிருந்து வழங்க வேண்டும் என்று உத்தரவிடப்படுகிறது. இந்த பராமரிப்புத் தொகை ஒவ்வொரு ஆங்கில மாதமும் 5ம் தேதிக்குள் வழங்கப்பட வேண்டும். மனுத் தேதியான 19.12.2018லிருந்து இன்று (16.12.2022) வரையுள்ள நிலுவைத் தொகை 2 மாத காலத்திற்குள் 1ம் எதிர்மனுதாரரால் வழங்கப்பட வேண்டும்.

46(iii). மேற்கண்ட விவாதத்திலிருந்து 1ம் மனுதாரருக்கு குடும்ப வன்முறை செயல்களுக்கு இழப்பீடாக 1, 2, 3, 5 எதிர்மனுதாரர்கள் தனித்தனியாக கூட்டாகவோ ரூ.20,00,000/- வழங்க வேண்டும் என்று உத்தரவிடப்படுகிறது.“

8. Aggrieved by the same, the petitioners have preferred an appeal in Crl.A.No.36 of 2023 before the Additional District and Sessions Court, Tenkasi. In the said appeal, the petitioners have filed Crl.M.P.No.335 of 2023 to stay the order passed by the learned Judicial Magistrate, Tenkasi in DVC No.1 of 2019 dated 16.12.2022 till the disposal of the criminal appeal. By the impugned order dated 28.04.2023, the learned Additional District and Session Judge, Tenkasi, dismissed the said petition with the following observation:-



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“7.Point: In this petition the Petitioners' main contention is that the Lower Court had passed the order against the prayer of the Respondents which is biased and the 1st petitioner could not pay the amount as ordered by the Judicial Magistrate. Therefore he had preferred this Appeal and till the disposal of this Appeal stay is to be granted. Whereas the Respondents' main objection is that the provision under which the stay is prayed is wrong. And the 1st petitioner did not pay any amount till date. And he himself had admitted that he is working in foreign country therefore the Lower Court has rightly passed the order. Hence, the petition is to be dismissed.

8. The provision under which the petitioner prayed for stay is u/s. 29 of D.V. Act. And this Section deals only with Appeal. But the Petitioner had prayed to stay the operation of the order of learned Judicial Magistrate. The main argument of the Petitioner is that the Lower Court had passed the order which is not prayed by the Respondents. The legality of the order cannot be decided in the stay petition. When the stay is to



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be prayed, the Petitioner must disclose that whether there is any urgency to stay the operation of the order and he must show that he will incur loss and difficulty by the order. Both the counsels did not state whether any Execution Petition is filed by the Respondents. Under such circumstances, there is no imminent urgency for staying the operation of the order of the learned Judicial Magistrate. There are no merits in the petition. Hence, this petition is to be dismissed."

9. This Court, by its order, dated 26.06.2023, directed the first petitioner to deposit a sum of Rs.20,000/- each per month towards maintenance for the respondents 2 and 3 herein. With regard to payment of compensation of Rs.20,00,000/-, an order of interim stay is granted against the order passed by the learned Judicial Magistrate, Tenkasi.

10. Considering the above facts and circumstances of the case, the first petitioner shall continue to deposit a sum of Rs.20,000/- each per month towards maintenance for the respondents 2 and 3 herein to the credit of DVC



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No.1 of 2019 on the file of Judicial Magistrate Court, Tenkasi. The first respondent is at liberty to withdraw 50% of the said amount upon filing appropriate application before the trial Court. As far as deposit of compensation of Rs.20,00,000/- is concerned, an order of interim stay is granted until disposal of Crl.A.No.36 of 2023. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The Additional District Judge,
Thenkasi.



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K.GOVINDARAJAN THILAKAVADI

cp/vsn

Pre-delivery order made in
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