

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.1357 of 2014

and

M.P.No.1 of 2014

V.S.Karuna ... Petitioner

vs.

K.Sumathi Respondent

Criminal revision case filed under Section 397 read with Section 401 of Cr.P.C. to set aside the order dated 13.12.2013 in M.P.No.712 of 2012 in M.C.No.333 of 2012, on the file of II Additional Family Court, Chennai.

For Petitioner : Mr.M.Prabakar

For Respondent : Mr.O.S.Vijaya Sarathi

JUDGMENT

Earlier orders of this Court have been extracted on 05.03.2015, is as follows:

"On 07.01.2015, this Court passed the following order:

"Mr.Prabakar, learned counsel for the petitioner assailed the impugned order made in M.P.No.712 of 2012 in M.C.No.333 of 2012 dated 13.12.2013 on the file of II Additional Family Court, Chennai, on the grounds inter alia that the petitioner is jobless and that he cannot pay the exorbitant amount of Rs.10,000/- per month, as interim maintenance and a further sum of Rs.25,000/- as litigation expenses. However, after hearing the case on merits, learned counsel for the petitioner submitted that 50% of the maintenance amount as ordered in M.C.No.333 of 2012 dated 13.12.2013, would be paid on 19.01.2015, which works out to Rs.1,45,000/- (50% of Rs.2,90,000/- i.e. @

Rs.10,000/- per month for 29 months from 29.08.2012 to 29.12.2014). 50% of the litigation expenses to be paid.

2. Learned counsel for the petitioner is permitted to take private notice to the respondent, returnable by 19.01.2015. It is made clear that if notice as ordered by this Court is not effected within such time, further orders would be passed on merits. Stay of the impugned order would be considered only if payment is made on or before 19.01.2015.

3. Post on 19.01.2015."

3. Further order passed on 21.01.2015 is extracted hereunder:

"Learned counsel for the petitioner seeks extension of time for payment as directed on 07.01.2015. This Court has already made it clear that the stay of the impugned order would be considered only if payment is made on or before 19.01.2015. Now, it is open to the trial Court to proceed further if any application for enforcement under Section 128 of Cr.P.C., is filed.

Post on 30.01.2015."

4. When the matter came up on 02.02.2015, by recording the fact that no payment has been made, Registry was directed to post the CrI.R.C.No.1357 of 2014 on 18.02.2015. Today, when the matter is listed, there is no appearance for the petitioner.

Post 'For Dismissal' on 09.03.2015."

2.Inability to pay 50% of the maintenance amount and 50% of the litigation expenses is the only reason made by the petitioner on the date of hearing of the miscellaneous petition, this Court is not inclined to accept the said reasons. The plea of inability cannot be a ground, for absolving the liability of the husband to pay maintenance.

3.Going through the material on record, it could be deduced that the petitioner has marked Ex.P.1-OP Chit, Ex.P.2-Pan Card, Ex.P.3-Photo copy of Wintech Security Force Identity Card and Ex.P.4-Copy of FIR registered against the petitioner/respondent. In Ex.P.3, the petitioner has been described as Divisional Manager. He is also an Income-Tax Assessee.

4.It is the submission of the learned counsel for the petitioner that both the Pan Card and the photo copy of Wintech Security Force Identity Card shows the income of the petitioner and thus, the Court below has erred, in directing the petitioner to pay a sum of Rs.10,000/- per month, as interim maintenance, and also a sum of Rs.25,000/- as litigation expenses. The fact that the petitioner was employed, in a Security Company, has been substantiated.

5.Merely because, the respondent/wife has produced Ex.P2- Pan Card and Ex.P3-Identity Card to prove that the petitioner/husband was a Divisional Manager in Wintech Security Force, it cannot be presumed that the income of the petitioner/husband was commensurate to pay maintenance to the wife, at the rate of Rs.10,000/- (Rupees ten thousand) per month. Before the Court below, in M.P.No.712 of 2012 in M.C.No.333 of 2012, the respondent/wife has sought for an exorbitant interim maintenance of Rs.40,000/- per month. She has sought for travelling and medical expenses of Rs.75,000/- and a huge unimaginable litigation expenses of Rs.2,75,000/- from the husband.

6.By observing that the cost of living and prices have escalated, the Court below has ordered Rs.10,000/-(Rupees ten thousand) as interim maintenance. The Court below has ordered Rs.25,000/- (Rupees twenty five thousand) towards litigation expenses. No material evidence has been considered by the Court below, on the income earned by the husband, though as per Ex.P3-Identity Card, his designation was a Divisional Manager, on the date of hearing of the miscellaneous petition. In the absence of the respondent/wife producing any tangible evidence, to prove the monthly income of the husband, this Court is of the view that the quantum of interim maintenance at Rs.10,000/- is on the higher side. However, considering the avocation of the husband as Divisional Engineer in a Security Company, and the cost of living, which prevailed in the year 2012, i.e., at the time of filing of M.C.333/12, on the file of the learned II Additional Family Court, Chennai, this Court deems it fit to reduce the interim maintenance at Rs.6,000/- (Rupees six thousand) per month. The litigation expenses is also reduced to Rs.10,000/- (Rupees ten thousand). M.C.No.333 of 2013 is still pending, on the file of the learned II Additional Family Court, Chennai.

7.During the course of hearing Mr.M.Prabakar, learned counsel for the petitioner/husband submitted that for non payment of interim maintenance, the respondent/wife has filed an application for enforcement and that, a non-bailable warrant has been issued.

8.Mr.M.Prabakar, the learned counsel for the petitioner has assured that the entire arrears amount at the rate of Rs.6,000/- (Rupees six thousand only), now ordered by this Court, would be paid within one month from the date of receipt of a copy of this order. The submission of the learned counsel is placed on record.

9.As the petitioner himself has come forward to pay the entire arrears, as indicated above and for the reasons stated supra, this Court deems it fit to interfere with the order of interim maintenance as stated supra. Consequent to the modification of rate of interim maintenance and the litigation expenses, the petitioner is directed to pay the arrears of interim maintenance, at the rate of Rs.6,000/- per month, from 29.8.2012, to this date, within a period of one month from the date of receipt of a copy of this order. The petitioner/husband shall continue to pay interim maintenance at the rate of Rs.6000/- (Rupees six thousand) to the respondent on or before 5th of every English Calendar month without fail, till the disposal of M.C.No.333 of 2012, on the file of the learned II Additional Family Court, Chennai. The petitioner shall also pay a litigation expense of Rs.10,000/- (Rupees ten thousand) within the above said period. Upon failure to honour the directions, within the time provided for, it is open to the learned II Additional Family Court, Chennai, to enforce the order for maintenance.

10.With the above modifications in the order dated 13.12.2013 in M.P.No.712 of 2012 in M.C.No.333 of 2012, this criminal revision case is partly allowed.

-s/d-

Assistant Registrar()

True Copy

Sub-Assistant Registrar

To

The II Additional Family Court,
Chennai.

+ 1 cc to M/s.O.S.Vijayasathy, Advocate SR 13131

+ 1 cc to M/s.M.Prabakaran, Advocate SR 13064

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