

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No. 448 of 2014

V.Babu

... Petitioner

vs.

S.Vigneshwari

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.MP.No.16362 of 2013 dated 01.04.2014 on the file of the learned Principal Sessions Judge, City Civil Court, Chennai.

For Petitioner : Mr.D.K.Nepolean

For respondent : Mr.Auxiliapeter

JUDGMENT

Criminal Revision Petition is filed against the dismissal of Crl.M.P.No.16362 of 2013 dated 01.04.2014 on the file of the learned Principal Sessions Judge, City Civil Court, Chennai, seeking condonation of delay of 51 days in filing the revision.

2.Material on record discloses that the respondent, in M.C.No.8 of 2013, has sought for the following reliefs:

- "(1)direct the petitioner and in-laws to pay Rs.25 lakhs for the various act of domestic abuses,
- (2)direct the respondent to pay maintenance of Rs.30,000/- per month,
- (3)direct the petitioner and in-laws to return all silver, bronze household articles and personal belongings listed in the application,
- 4)refraining the petitioner and in-laws from harassing her."

3. Pending MC No.8 of 2014, the respondent has filed Crl.MP.2342 of 2013, for a direction to the respondent to pay Rs.30,000/- as interim maintenance towards food, shelter, traveling and medical expenses. Counter affidavit has been filed. Vide order dated 13.09.2013 in CrlMP.No.2342 of 2013 in MC No.8 of 2013, the learned IX Metropolitan Magistrate, Saidapet, Chennai, has directed the petitioner to pay Rs.15,000/- per month, as interim maintenance. Being aggrieved by the same, the petitioner/husband has filed an appeal in C.A.SR.No.11601 of 2013, with a delay of 51 days in preferring the appeal.

4. In the supporting affidavit for condonation, the petitioner has contended that there was a delay in getting the copy of the impugned order. The respondent/wife has contended that despite an order of the lower Court in Crl.MP.No.2342 of 2013, dated 13.09.2013, the petitioner has not chosen to pay arrears of maintenance of Rs.75,000/-. According to her, the petitioner has deliberately delayed the payment of maintenance. She also submitted that explanation submitted by the husband is not satisfactory and sufficient cause is not shown. Adverting to the above submissions, the learned Principal Sessions Judge, Chennai, has dismissed the delay execution petition, as the petitioner has not shown sufficient cause for condonation. Being aggrieved by the same, the present revision has been filed.

5. Inviting the attention of this Court, to the Salary Certificate issued by one PK Engineering, Fabrication & Erection of Structural and Equipments Works, Mr.D.K.Nepolean, learned counsel for the petitioner submitted that the net income of the petitioner is only Rs.14,799/- and in such circumstances, an exorbitant amount of Rs.15,000/- per month, ordered as interim maintenance, cannot be paid by the petitioner and in such circumstances, the order of interim maintenance requires to be set aside and when the petitioner had filed an appeal under Section 5 of the Limitation Act, the learned Principal Sessions Judge, Chennai, ought to have condoned the delay and permitted the appellant to pursue his statutory appeal. According to him, the petitioner had offered sufficient cause. He also further submitted that the dismissal of the condonation delay petition has deprived his right of appeal. For the reasons stated supra, he prayed for setting aside the impugned order.

6. Per contra, Mr.Auxiliapeter, learned counsel for the respondent/wife submitted that the Salary Certificate dated 27.07.2013, produced before this Court, was never mentioned in the counter affidavit, filed by the petitioner/husband. He has also submitted that when the wife made a specific averment that the petitioner was employed in a private company "Solutions Facility Mismanagement Services, West Mambalam, Chennai," and also earned Rs.30,000/- per month, there was no denial in the counter affidavit.

Therefore, he submitted that the petitioner has sufficient means to pay maintenance and only to protract the proceedings, appeal has been filed against an interim order. He also submitted that there is no bonafide on the part of the petitioner. For the reasons stated supra, he prayed for dismissal.

7. In response to the same, the learned counsel for the petitioner submitted that the Salary Certificate issued by PK Engineering, Fabrication & Erection of Structural and Equipments Works, has been filed, as one of the documents in the appeal.

8. Heard the learned counsel for the parties and perused the material available on record.

9. Interim maintenance of Rs.15,000/- per month has been ordered in Crl.MP.No.2342 of 2013 in MC.No.8 of 2013, dated 13.09.2013, on the file of the learned IX Metropolitan Magistrate, Chennai. In the main proceedings, the respondent/wife has sought for maintenance at Rs.30,000/- per month. While MC.No.8 of 2013 was pending, an application in Crl.M.P.No.2342 of 2013 under Section 23 of the Protection of Women from Domestic Violence Act, 2005, has been filed, claiming interim maintenance. Even taking it for granted, that the petitioner has not made any specific denial of being employed in a private Company, as averred, by the wife in MC No.8 of 2013, yet it is for the wife to prove the income earned by her husband. Right of appeal is statutory. As per the supporting affidavit, the reason for condoning the delay of 51 days in preferring the appeal, is that copy of the impugned order was obtained belatedly. While dismissing the delay execution petition, the learned Principal Sessions Judge, Chennai, has observed that there is no indication in the copy of the order produced before the Court, that it was furnished belatedly.

10. However, when it is the case of the petitioner that there was a delay in obtaining the copy of the order, considering the right of the aggrieved person to prefer a statutory appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, the learned Principal Sessions Judge, Chennai, could have condoned the delay of 51 days, by imposing certain conditions. Discretion exercised by the Court below in dismissing the condonation petition, does not subserve interest of justice, an interim order of maintenance of Rs.15,000/- per month, has been made. However, considering the fact that the petitioner has not chosen to pay any maintenance from the date of passing of the interim order i.e., 13.09.2013 and also the right of the petitioner, to challenge the order, in the interest of Justice, this Court, is inclined to condone the delay of 51 days in filing the appeal, by setting aside the order made in Crl.MP.No.16362 of 2013 in C.A.SR.No.11601 of 2013, dated, 01.04.2014, subject to the condition that the petitioner pays a sum of Rs.1,00,000/- within a period of one month from the date of receiving the copy of the order.

11. For pursuing his right of appeal, the petitioner shall produce the payment receipt before the Court below within abovesaid period. It is made clear that if the amount is not paid within the abovesaid period, appeal shall not be numbered. Condition imposed by this Court, should not construed as reduction in the quantum of interim maintenance ordered in CrI MP.No.2342 of 2013, dated 13.09.2013, on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai. Upon entertaining the appeal, learned Principal Sessions Judge, Chennai, shall advert to the merits of the contentions of the parties as to the order of the maintenance of Rs.15,000/- per month. The appeal shall be disposed of as expeditiously as possible.

With the above directions, this Criminal Revision Case is disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1. The Principal Sessions Judge,
City Civil Court, Chennai

1 cc to Mr.D.K.Nepolean ,Advocate, SR.No.10607

1 cc to Mr.Auxiliapeter ,Advocate, SR.No.10704

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gj(co)
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