

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1737 of 2014

Jegankumar

.. Petitioner

Vs.

S.Sukanya

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India against the order and decreetal order made in M.P.No.47 of 2012 in H.M.O.P.No.149 of 2011 dated 9.1.2014 passed by the Subordinate Judge, Ponneri.

For Petitioner : Mr. P. Balamurali

For Respondent : Mr. J.R.K. Bhavanandam

ORDER

This Civil Revision Petition is filed against the order and decreetal order made in M.P.No.47 of 2012 in H.M.O.P.No.149 of 2011 dated 9.1.2014 passed by the Sub Judge, Ponneri.

2. Challenging the impugned order passed on 9.1.2014 in M.P.No.47 of 2012 in H.M.O.P.No.149 of 2011 allowing petition for maintenance under Section 24 of Hindu Marriage Act filed by the responding/wife, granting Rs.5,000/- as maintenance to the respondent/wife and Rs.2,500/- as maintenance for each of the children, along with Rs.5,000/- for litigation expenses, the present Civil Revision Petition has been filed by the petitioner/husband.

3. Heard both sides.

4. Learned counsel appearing for the petitioner would submit that the petitioner husband filed an application for divorce before the Subordinate Judge, Ponneri in H.M.O.P.No.149 of 2011 on the ground of cruelty, wherein, the respondent wife has filed an M.P.No.47 of 2012 under section 24 of Hindu Marriage Act claiming maintenance for herself and for her two minor children along with litigation expenses. He would further submit that the take home salary of the petitioner husband is only Rs.12,000/-, so the petitioner husband is not in a position to give Rs.10,000/- as monthly maintenance for his wife and children. Hence he prayed for reduction of maintenance amount awarded by the trial court.

5. Resisting the same, learned counsel for the respondent would submit that the petitioner has been receiving Rs.40,000/- as his monthly salary and in order to prove his contention that his take home salary is Rs.12,000/-, he has not furnished any single document before the court. The trial court, after considering the same has rightly awarded the maintenance to respondent wife and her minor children as stated above. Hence he prayed for dismissal of this Revision.

6. Considered the rival submissions made on both sides and perused the typed set of papers filed in support of this Revision.

7. It is apparent that the petitioner husband has filed H.M.O.P.No.149 of 2011 for divorce on the ground of cruelty, wherein respondent wife has filed M.P.No.47 of 2012 for maintenance. The only dispute raised by the parties before this court is in respect of the quantum of compensation awarded by the trial court. It is pertinent to note that as the petitioner husband has filed divorce petition, the respondent wife was forced to contest the same. Hence the petitioner husband ought to have pay the litigation expenses that has to be incurred by his wife. The amount awarded by the trial court of Rs.5,000/- towards litigation expenses is

minimal. Hence, I am of the view, the litigation expenses awarded by the trial court does not warrant any interference, hence, the amount of Rs.5,000/- awarded by the trial court towards litigation expenses is hereby confirmed.

8. The trial court has awarded Rs.2,500/- each as maintenance for two minor children of the petitioner. Now they are studying in 4th and 6th standard. So, in order to meet out their educational expenses, this court thinks it fit that the amount awarded by the trial court of Rs.2,500/- as maintenance for each of the children is fair and proper and the same does not warrant any interference.

9. The trial court has awarded Rs.5,000/- as maintenance for respondent wife who is a house wife. As per the version of learned counsel for respondent wife, even though in paragraph 3 of the counter, it was specifically mentioned by the petitioner that he is not drawing monthly salary of Rs.42,000/-, it is pertinent to note that the petitioner husband is employed as a Mechanic in Ashok Leyland Company and further he has not filed his pay slip to prove the actual salary drawn by him. Thus non filing of the document has given an adverse inference against him. So the trial

court has rightly taken his monthly income as Rs.50,000/- and awarded Rs.5,000/- as monthly maintenance.

10. Now the learned counsel appearing for the petitioner would submit that his gross income is Rs.33,3394/-, out of which the amount to be deducted towards loan etc., would be Rs.21,298/-, hence his take home salary is only Rs.12,000/- and odd. Now a days, in matrimonial disputes, the husbands who are litigating against their spouses are in a practice of obtaining various loans from their employers and thereby reduce their take home salary, in order to avoid paying maintenance to their wife and children. The respondent wife is away from her matrimonial home from the year 2011. In such circumstances, I am of the view the deduction of Rs.21,228/- from his gross salary is according to the whims and fancies of the petitioner. Therefore, the maintenance of Rs.5,000/- awarded for the wife by the trial court is fair and proper and hence, it does not warrant any interference.

R. MALA, J

msr

11. In the result, the Civil Revision Petition is dismissed confirming the maintenance awarded by the learned Subordinate Judge, Ponneri in M.P.No.47 of 2012 in H.M.O.P.No.149 of 2011. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

15.12.2015

Index :Yes/No
Internet:Yes/No
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To

The Subordinate Judge, Ponneri.

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