

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.159 of 2015

and

M.P.No.1 of 2015

K.Venkateswara Rao .... Petitioner

vs.

1.Vidhya

2.V.Maalika

V.V.Pranesh Rao (Minor)

rep.by his mother Vidhya ... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 read with 401 of Criminal Procedure Code to call for the records and consequently, set aside the impugned order dated 31.10.2014 in M.P.No.778 of 2013 in MC No.359 of 2011 passed by the learned II Additional Principal Family Judge, Chennai.

For Petitioner : Mr.DJ.Adinarayanan

JUDGMENT

Being aggrieved by the order made in Crl.MP No.778 of 2013 in MC No.359 of 2011, dated 31.10.2014, on the file of the learned II Additional Principal Judge, Chennai, the present revision petition is filed.

2.Material on record discloses that MC No.359 of 2011, has been filed by the wife and two minor children, against the petitioner, for maintenance of Rs.7,000/- each to the claimants. After so many hearings, the petitioner/husband was set ex parte on 16.07.2013. M.P.No.670 of 2013 has been filed by the wife and children for collection of Rs.3,60,000/- as on 24.08.2013. When the matter stood thus, the petitioner has filed Crl.MP No.778 of 2013 under the proviso 126(2) to condone the delay of 13 days in filing application, to set aside the ex parte order passed in MC No.359 of 2011, dated 16.07.2013.

3. During the course of hearing, Mr.DJ.Adinarayanan, learned counsel for the petitioner submitted that a sum of Rs.7,000/- each, has been ordered as maintenance to be paid to the claimants, totaling Rs.21,000/- per month.

4. Perusal of petition in MC No.359 of 2011 shows that the petitioner had intended to mark the following documents.

List of documents filed under Order VII Rule 14(1) CPC:

| S.No. | Date       | Description of document | Nature   |
|-------|------------|-------------------------|----------|
| 1     | 16.08.1991 | Marriage invitation     | Original |
| 2     | -          | Marriage Photo          | Original |

List of documents filed under Order VII Rule 14(2) CPC:

| S.No. | Date          | Description of document                                           | Nature    |
|-------|---------------|-------------------------------------------------------------------|-----------|
| 1     | 03.01.1995    | Birth Certificate of 2 <sup>nd</sup> petitioner                   | True Copy |
| 2     | 16.04.2000    | Birth Certificate of 3 <sup>rd</sup> petitioner                   | True Copy |
| 3     | 14.05.2003    | Publication for name change of the 3 <sup>rd</sup> petitioner     | True Copy |
| 4     | April 2010    | Petition filed in OP No.1103 of 2010                              | True Copy |
| 5     | November 2010 | Counter filed in OP No.1103 of 2010 by 1 <sup>st</sup> respondent | True Copy |
| 6     | 2005-2009     | Ration Card                                                       | True Copy |

5. Considering the averments of the claimants that only in order to escape his liability to pay maintenance, the petitioner had not chosen to appear in MC No.359 of 2011, and in the interest of justice, by order dated 31.10.2014, the learned II Additional Family Judge, Chennai, has allowed the condonation petition, on condition that the petitioner pays a sum of Rs.1,00,000/- in two installments. The 1<sup>st</sup> installment has been directed to be paid on 20.11.2014 and the 2<sup>nd</sup> installment has been directed to be paid on 19.12.2014. Learned II Additional Family Judge, Chennai, has further directed the matter to be listed on 20.12.2014. Though a sum of Rs.21,000/- has been ordered as maintenance, in MC No.359 of 2011, vide order dated 16.07.2013, and that MP No.670 of 2013, filed for realisation of Rs.3,60,000/-, as on 24.08.2013, was pending on the file of the learned II Additional Family Judge, Chennai, in the interest of justice, and considering the plight of

the respondents/claimants, the Court below has directed payment of Rs.1,00,000/-, to be paid in two installments. From the above, it could be deduced that from August 2011 onwards, the petitioner has not paid maintenance to the wife and children. If the sum of Rs.1,00,000/-, directed to be paid, in two equal installments, is apportioned towards monthly maintenance, as on 24.08.2013, it works out to only Rs.4,167/- per month to the wife and children, stated to be aged about 16 years and 11 years, respectively, at the time of filing of MC No.359 of 2011. Considering the above facts, the condition imposed by the Court below, to consider the condonation of delay of 13 days in filing the application to set aside the ex parte order in MC No.359 of 2011, cannot be, said to be an illegal. Amount ordered is reasonable. Even after the directions issued on 31.10.2014, now for the past four months, the petitioner has not paid any maintenance. On the facts and circumstances of this case, this Court is of the view that the petitioner has no bonafides.

In the light of the above, this Court is not inclined to interfere with the impugned order. Consequently, Criminal Revision case is dismissed.

Sd/-

Asst.Registrar (J )

/true copy/

Sub Asst. Registrar

mps

To

The II Additional Principal Family Judge,  
Chennai.

1 cc to Mr.D.J. Adinarayanan, Advocate, Sr. 11131

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