

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.240 of 2015
and M.P.No.1 of 2015

Balasubramaniam

... Petitioner

vs.

Minor Kanishka
D/o Balasubramaniam
rep by next friend, Mother Neelaveni

... Respondent

Petition filed under Section 397 (1) and 401 Cr.P.C. to call for the records and set aside the judgment dated 09.05.2014 in M.C.No.12 of 2012 passed by the District Munsif and Judicial Magistrate, Paramathy, Namakkal District.

For Petitioner : Mr.B.Vasudevan

O R D E R

Material on record discloses that the respondent/wife and minor daughter, have filed M.C.No.12 of 2012 on the file of the learned District Munsif-cum-Judicial Magistrate, Paramathy, contending that the marriage between the parties was solemnised on 05.02.1995. The couple were blessed with two children, a son and daughter. At the time of filing of M.C.No.12 of 2012, children were stated to be 17 years and 5 years respectively. Contending inter alia that husband/petitioner, has neglected the respondents and failed to provide maintenance, M.C.No.12 of 2012 has been filed.

2. Husband, has objected for grant of maintenance on the ground inter alia that the respondent/wife, had refused to live with him and that she had illicit intimacy with one Gunasekaran, the then Vice President of the Panchayat.

3. Before the Court below, wife examined herself as P.W.1 and marked Exs.P1 to P8. Husband/revision petitioner examined himself as R.W.1 and marked Exs.R1 and R2. The Court below after considering the oral and documentary evidence, and in particular, an ex parte decree of divorce in HMOP No.214 of 2012 dated 04.01.2009, wherein, there is reference to the alleged conduct of the wife in having illicit intimacy with one Gunasekaran, declined to grant maintenance to the wife. However, having regard to the entitlement of the minor daughter, awarded maintenance of Rs.3,800/- per month, from the date of filing of M.C.No.12 of 2012.

4. Though Mr.B.Vasudevan, learned counsel for the petitioner assailed the correctness of the order granting maintenance to the child, as it is without any basis, and further contended that the Court below has failed to consider the avocation and inability of the petitioner to pay the said quantum of compensation, this Court is not inclined to interfere with the impugned order of maintenance granted to the minor daughter, for the reason that the said amount cannot be said to be grossly excessive. Taking into consideration the cost of living, inflation and such other factors, which determine a decent living, and in the interest of minor girl, for meeting the expenses for basic amenities, food, shelter, clothing, a parent has to incur considerable expenditure. A parent has to incur expenditure for providing education also.

5. Though under Article 21-A of the Constitution of India, the State has to provide free and compulsory education to all the children of the age of six to fourteen years, still it cannot be lost sight of, that for purchase of books and other materials, one may have to incur expenditure. A parent has to take care of the health of the child also. Rs.3,800/- awarded, as maintenance to a girl child, cannot be said to be on the higher side, warranting intervention.

6. During the course of hearing, Mr.B.Vasudevan, learned counsel for the petitioner submitted that son is with the father and that the petitioner is willing to take the daughter also. If that be the intention of the petitioner, he could have very well filed an application for custody of the girl child, even during the pendency of M.C.No.12 of 2012 and HMOP No.214 of 2012. Material on record discloses that the petitioner has not resorted to the above said course even during the pendency of M.C.No.12 of 2012. There is no manifest illegality in the impugned order, warranting interference. Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/- जयमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Gms

To

The District Munsif and Judicial Magistrate,
Paramathy, Namakkal District.

Cr1.R.C.No.240 of 2015