

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1217 of 2010

R. Madhavan

.. Petitioner

Versus

1. Usha Anandhi
 2. Minor. Kavipriya
rep. by her mother and natural
guardian Usha Anandhi
- .. Respondents

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. against the Order dated 08.09.2009 passed in C.M.P. No. 2770 of 2009 in M.C. No. 12 of 2008 on the file of Judicial Magistrate Court No.2, Tirupathur, Vellore District.

For Petitioner : Mr. V. Babu

For Respondents : Mr. P.A. Sudesh Kumar

ORDER

The revision petitioner has come forward with this revision questioning the correctness of the order dated 08.09.2009 passed in CMP No. 2770 of 2009. The said Petition was filed by the revision petitioner herein under Section 126 (2) of Cr.P.C. praying to set aside the exparte order dated 29.04.2009 passed in M.C. No. 12 of 2008.

2. According to the revision petitioner, the respondents herein have filed the above M.C. No. 12 of 2008 claiming maintenance at the rate of Rs.3,500/- for the wife/first respondent and Rs.1,500/- to the daughter/second respondent, totalling Rs.5,000/-. Even though the revision petitioner engaged an advocate on 27.08.2008 and also filed counter on 06.01.2009, on subsequent dates of hearing, as he did not appear, the Maintenance Case was ordered exparte. The petitioner therefore filed the above CMP No. 2770 of 2009 to set aside the exparte order of maintenance by contending that during the pendency of the Maintenance Case, on 28.05.2008 he went to the parents house of the first respondent along with Panchayatars and the first respondent signed an agreement for consent divorce and also to withdraw the Maintenance Case. Therefore, the petitioner did not appear before the trial Court in the Maintenance Case. However, to

his shock and surprise he was informed by his employer that a sum of Rs.3,000/- towards maintenance to the respondents will be deducted from his salary as per the order passed on 29.04.2009 in M.C. No. 12 of 2008. According to the revision petitioner, only thereafter, did he came to know about the exparte order dated 29.04.2009 passed by the Court below. The non-appearance before the trial Court is due to the assurance given by the first respondent to withdraw the Maintenance case on the basis of the agreement signed by the first respondent and prayed to set aside the order dated 29.04.2009.

3. The trial Court, on appreciation of the averments made by the petitioner concluded that only after filing the counter affidavit in the maintenance case, it is alleged that the revision petitioner approached the first respondent on 28.05.2008 to sign a consent deed, but the fact remains that the Maintenance Case itself was filed on 30.07.2008. In the maintenance case, even though the revision petitioner was represented by a counsel, he did not appear before this Court and therefore the exparte order was passed. At any rate, the reasons assigned by the revision petitioner for not appearing before the court is not satisfactory.

4. The learned counsel for the petitioner would contend that the petitioner was absent only for one hearing. The petitioner has also filed his counter affidavit in the maintenance case. In such circumstances the court below ought to have given one more opportunity to the petitioner to contest the maintenance case especially when the maintenance amount is ordered to be attached from the salary payable to the petitioner by his employer.

5. On the other hand, the learned counsel for the respondents would contend that even during the course of matrimonial life, the revision petitioner had obtained the signature of first respondent in certain blank papers which were now made used to make it as if the first respondent signed a consent deed for divorce. In any event, the first respondent disputed the fact that she has not signed any deed consenting to dissolve the marriage solemnised with the revision petitioner. In any event, the reasons assigned by the revision petitioner for setting aside the exparte order is false. The delay in filing the application to set aside the exparte order is enormous and it was not properly explained by the revision petitioner. Further, by way of attachment of salary of the revision petitioner, only a sum of Rs.1,500/- was deducted and remitted by the employer of the revision petitioner. Even such deduction was made only for a period of six months and thereafter the order of attachment has not been given effect to. In such circumstances, the trial Court, taking into consideration the materials available on record, directed the revision petitioner to pay a sum of Rs.3,000/- per month as maintenance.

6. I heard the counsel for both sides and perused the materials placed on record. It is seen from the records that the respondents

have filed Maintenance Case claiming maintenance at the rate of Rs.5,000/- per month. The maintenance case was contested by the revision petitioner herein by filing a counter. However, the revision petitioner has abandoned the proceedings which resulted in passing an exparte order granting a sum of Rs.3,000/- as maintenance amount to the respondents herein. The reason assigned for not appearing before the trial court is that the first respondent assured that she would withdraw the maintenance case and executed a consent deed for dissolution of the marriage. However, the signatures in the consent deed has been disputed and denied by the first respondent by stating that even during the matrimonial life, the revision petitioner obtained her signature in blank papers and one such blank paper is being used by the revision petitioner as though she consented for dissolution of the marriage. The first respondent also denied that she never consented to withdraw the matrimonial case. However, the trial court ought to have given one more opportunity to the petitioner to contest the Maintenance Case on merits when admittedly the revision petitioner did not appear only for one hearing.

7. It is represented by the counsel for the respondents that pending this Revision Case, by way of order of attachment of salary, Rs.1,500/- was recovered and remitted to the credit of maintenance case by the employer of the revision petitioner and such deduction was made only for six months. This Court also granted interim stay on 13.12.2010 in MP No. 1 of 2010 subject to condition the petitioner pays Rs.1,500/- per month towards maintenance pending disposal of the Criminal Revision Case. Therefore, in order to meet the ends of justice, I am inclined to set aside the order passed by court below subject to certain conditions. If the petitioner deposits the maintenance amount at the rate of Rs.2,000/- per month from the date of filing MC No. 12 of 2008 after adjusting the amount, if any paid or remitted already, within a period of two weeks from the date of receipt of a copy of this order, the order dated 08.09.2009 passed in C.M.P. No. 2770 of 2009 in M.C. No. 12 of 2008 on the file of Judicial Magistrate Court No.2, Tirupathur, Vellore District shall stand set aside. However, if the amount is not deposited at the rate of Rs.2,000/- per month within a period of two weeks as indicated above, the order passed by the trial court on 08.09.2009 shall be revived/confirmed

8. In the result, the Criminal Revision Case is partly allowed to the extent indicated above. Consequently, MP No. 1 of 2010 is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

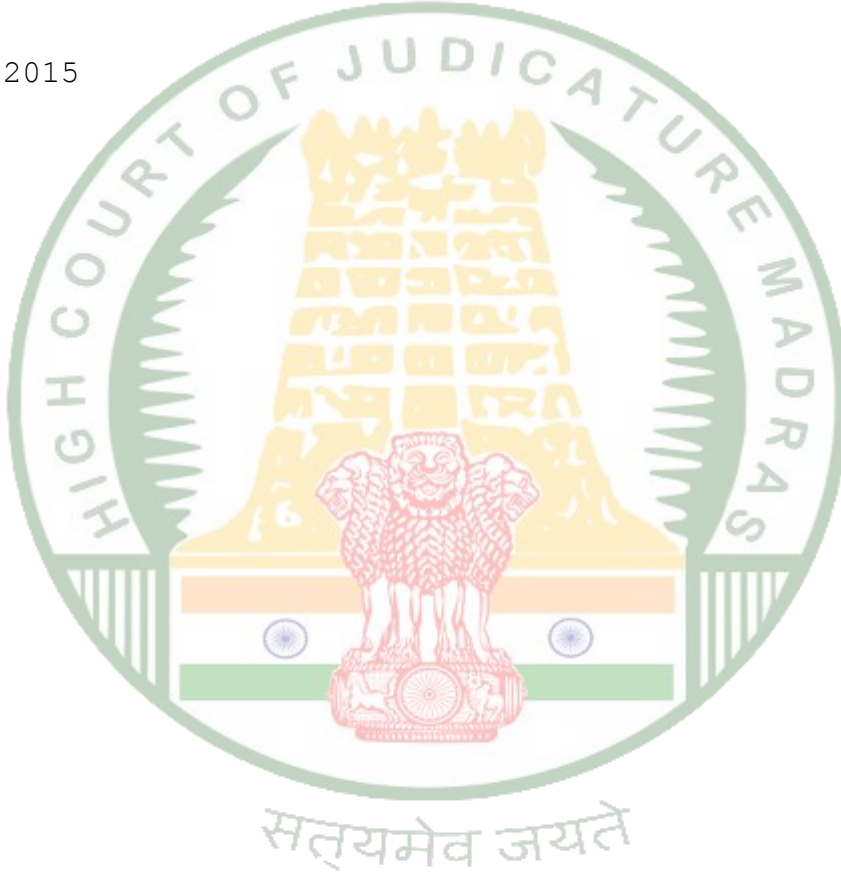
To

1. The Judicial Magistrate No.2
Tirupathur, Vellore District.
2. The chief Judicial Magistrate,
vellore.

1cc to Mr. Venkataswamy Babu Advocate sr.37194
1cc to PA. Sudesh kumar, Advocate sr.37089

Crl RC No.1217 of 2010

km[co]
srg 06.08.2015



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