

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.20028 of 2015 and
M.P.No.1 of 2015

1.Manish Gadia
2.Kavita Gadia
3.Amit Gadia
4.Vinay Gadia .. Petitioners

Naina Gadia Vs .. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the order in Crl.M.P.No.8246/2015 in C.A.No.116/2015 dated 20.07.2015 passed by learned XVI Additional Sessions Judge, Chennai.

For Petitioners :Ms.Yovini Rajesh,
for Mr.B.Satish Sundar

For Respondent :Mr.N.Baskaran

ORDER

Heard the learned counsel for the petitioners and the learned counsel for the respondent.

2.It is seen that the respondent herein initiated proceedings under the Domestic Violence Act in M.C.No.85/2013 against the petitioners herein, in which, the learned XXIII Metropolitan Magistrate passed final orders on 24.04.2015 directing the petitioners to pay maintenance of Rs.2 lakhs per month to the respondent and to her children and also directed the petitioners to deposit a sum of Rs.2 crores towards compensation and marriage expenses to the respondent.

3.Aggrrieved by the said order, the petitioners have approached the learned XVI Additional Sessions Judge, Chennai in Crl.A.No.116/2015. While admitting the said Criminal Appeal, the learned XVI Additional Sessions Judge, in Crl.M.P.No.8246/2015 on 20.07.2015, has passed the following order:-

"6.In the result without prejudice to the defence put forth by both sides, the 1st appellant is directed to pay a sum of Rs.1,00,000/- towards the order passed for maintenance, to the respondent on or before 5th of every English calendar month from today till the disposal of appeal. Further the 1st appellant is also directed to deposit a sum of Rs.50,00,000/- (Rupees fifty lakhs only) towards the order passed by the trial Court for damages and marriage expenses, on or before 10.08.2015, in default this petition stands dismissed. Call on 11.08.2015."

4.When the matter came up for admission, Mr.Baskaran, learned counsel took notice for the respondent/wife and therefore, the main Criminal Original Petition itself was taken up for final disposal.

5.It is admitted by both parties that the petitioners launched certain matrimonial proceedings in Bangalore, where they are residing and the respondent/wife also launched similar proceedings in Chennai. Therefore, an application was moved before the Hon'ble Supreme Court for transferring the cases from Chennai to Bangalore. The Hon'ble Supreme Court, heard both sides and has directed that all the cases be transferred to New Delhi and accordingly, now the parties are litigating their cases in New Delhi. While so, this Domestic Violence proceeding alone was left out.

6.It is contended by Mr.Baskaran, learned counsel for the respondent that the order passed by the First Appellate Court is not onerous inasmuch as the order is only an interim order and it should not be disturbed by this Court.

7.Per contra, Ms.Yovini Rajesh, learned counsel for the petitioners submitted that the First Appellate Court has directed the petitioners to deposit Rs.50,00,000/- on or before 10.08.2015 i.e., yesterday, failing which, the very interim stay petition shall stand dismissed.

8.As regards the order for interim maintenance passed by the First Appellate Court, this Court would not interfere into it and the petitioners will have to comply with the same by paying Rs.1,00,000/- before the 5th of every English calendar month to the respondent. In an appeal before the Superior Court, the parties can re-agitate even factual aspects and evidence can also be re-appraised by the Appellate Court.

9.It is seen that during the pendency of the Domestic Violence proceeding before the trial Court, the petitioners were paying Rs.50,000/- per month as maintenance to the respondent and to her children. In the final order in M.C.No.85/2013, the trial Court has directed the petitioners to pay Rs.2 lakhs per month from the date of petition i.e., from November 2013. This order has been modified by the learned XVI Additional Sessions Judge to the effect that

the petitioners need to pay Rs.1 lakh from the month of July 2015.

10.Mr.Baskaran, learned counsel for the respondent contended that the petitioners should be directed to pay the arrears of Rs.50,000/- per month from November 2013 to July 2015.

11.The learned counsel for the petitioner submits that the sum of Rs.50,000/- is to be apportioned equally between the respondent and the two children. She also submitted that the petitioners are willing to pay the arrears of maintenance payable to the children.

12.On a conspectus of the facts obtaining in this case, in the considered opinion of this Court, the order of the Sessions Judge directing the petitioners to deposit Rs.50,00,000/- would indeed be onerous. Hence, this Criminal Original Petition is partly allowed and the direction issued by the learned XVI Additional Sessions Judge, in Crl.M.P.No.8246/2015 in Criminal Appeal No.116/2015 dated 20.07.2015 with regard to the deposit of Rs.50,00,000/- (Rupees fifty lakhs only) for damages and marriage expenses on or before 10.08.2015 alone is set aside. In all other aspects the order passed by the learned XVI Additional Sessions Judge, in Crl.M.P.No.8246/2015 in Criminal Appeal No.116/2015 dated 20.07.2015 shall stand unaltered. MP.1 of 2015 is closed.

13.In view of the above discussions, this Court directs the petitioners to pay the arrears of maintenance for the children @ Rs.25,000/- per month from November 2013 to July 2015 (22 months) (Rs.25,000/- x 22 = Rs.5,50,000/-), to the respondent, within a period of four weeks from the date of receipt of a copy of this order. Further, the learned XVI Additional Sessions Judge, Chennai, is directed to expeditiously dispose of the appeal in Crl.A.No.116 of 2015.

14.At this juncture, it is represented by the learned counsel for the respondent/wife that he has also preferred an appeal challenging the order passed by the trial Court, but with delay. The delay condonation petition has been numbered as Crl.M.P.No.12317 of 2015 and the same is pending before the learned Appellate Judge. Learned counsel for the petitioners submitted that she will take notice in Crl.M.P.No.12317/2015. The learned Appellate Judge may also take into account the facts and circumstances of the case and pass appropriate orders in the delay condonation petition.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The XVI Additional Sessions Judge,
Chennai.

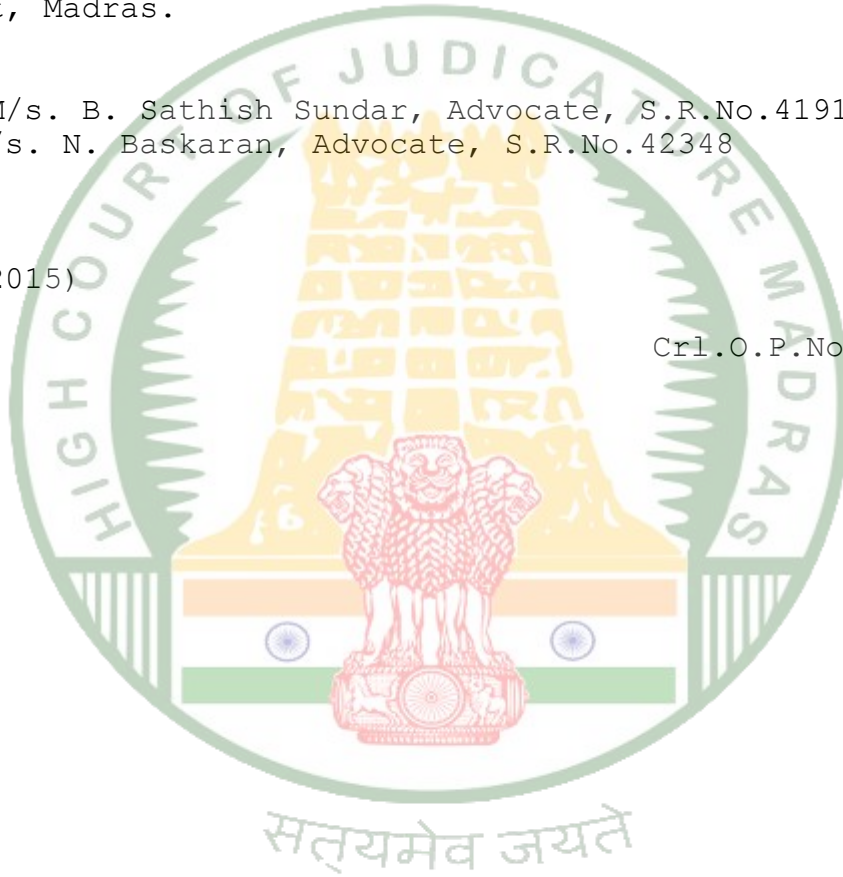
2. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+2ccs to M/s. B. Sathish Sundar, Advocate, S.R.No.41917
+1cc to M/s. N. Baskaran, Advocate, S.R.No.42348

MP(CO)
EU(26/08/2015)

Cr1.O.P.No.20028 of 2015



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