

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4589 of 2015

and

M.P. No.1 of 2015

G.Umadevi

.. Petitioner

Vs.

G.Ganesamoorthy

.. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 16.11.2015 made in I.A.No.77 of 2015 in H.M.O.P.No.17 of 2008 on the file of the Principal Sub-Court, Villupuram.

For Petitioner :Mr.C.Munusamy

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 16.11.2015 made in I.A.No.77 of 2015 in H.M.O.P.No.17 of 2008 on the file of the Principal Sub-Court, Villupuram.

2.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

3.The respondent/husband has filed a petition in H.M.O.P.No.17 of 2008 for divorce on the ground of cruelty. The revision petitioner/wife herein has filed a counter and contesting the same. The revision petitioner/wife has also filed an application in I.A.No.60 of 2008 for interim maintenance under Section 24 of the Hindu Marriage Act. The trial Court, after hearing both sides, awarded Rs.2,500/- per month, against which, she preferred C.R.P.No.3918 of 2009 before this Court. This Court by an order dated 07.07.2014 increased the maintenance amount from 2,500/- to Rs.6,500/- per month and also directed the trial Court to dispose of the main petition in H.M.O.P.No.17 of 2008 within a period of two months from the date of receipt of a copy of that order. Thereafter, P.W.1 and P.W.2 were cross-examined. Since the revision petitioner/wife wants to put forth some questions, she was forced to file an application in I.A.No.77 of 2015 for reopen and recall P.W.1 and P.W.2. The trial Court, after hearing both sides, dismissed the application, against which, the present revision petition has been preferred by the revision petitioner/wife.

4.Learned counsel for the revision petitioner/wife submits that the respondent/husband has not paid the maintenance amount. He

further submits that the revision petitioner was omitted to put some questions, which are relevant for the case, hence recalling P.W.1 and P.W.2 are necessary. Therefore, he prayed for allowing the revision petition.

5. On perusal of the typed set of papers, it reveals that the respondent/husband has filed a petition for divorce on the ground of cruelty. During pendency, she filed the application in I.A.No.60 of 2008 for interim maintenance, in which, the trial Court has awarded a sum of Rs.2,500/- per month to the revision petitioner/wife. Against the same, she has preferred C.R.P.No.3918 of 2009 before this Court and this Court increased the maintenance amount from Rs.2,500/- to Rs.6,500/- per month from February 2008 (date of petition) to July 2012 and thereafter, at the rate of Rs.7,500/- per month till the disposal of the main H.M.O.P.No.17 of 2008. Further, in para-9.1 of its order, it was held that "The payment of interim maintenance will be the condition precedent for the commencement of trial. "

6.It is pertinent to note that the trial Court in para-5 and 7 of its order held that P.W.1 and P.W.2 were cross-examined on 05.08.2015 and completed on 19.08.2015 and thereafter, it was adjourned for hearing respondent's side evidence. At that time, the revision petitioner/wife has come forward with the present application for reopen and recall P.W.1 and P.W.2. Further, it was held that since the High Court has fixed time limit for disposal of the main H.M.O.P., in the interest of justice, the application was dismissed.

7.It is well settled dictum of the Apex Court that no person will be permitted to recall the witness to fill up lacunas and gaps in the evidence.

8.Considering the aforestated circumstances of the case, I am of the view, the trial Court has considered all the aspects in proper perspective and came to the correct conclusion. So the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petition deserves to be dismissed and it is hereby dismissed.

9. In the result, this Civil Revision Petition stands dismissed by giving a direction to the trial Court to verify whether the respondent/husband has paid the maintenance amount to the revision petitioner/wife or not and if there is any arrears of maintenance amount, the respondent/husband is directed to pay the same within a period of one month from the date of receipt of a copy of this order. Further, the trial Court is directed to dispose of H.M.O.P.No.17 of 2008 within two months from the date of payment of maintenance amount. No costs. Consequently, connected Miscellaneous Petition is closed.

09.12.2015

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Index:Yes/No

To

The Principal Sub-Court, Villupuram.

R.MALA,J.

Kj

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