

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No. 1575 of 2008

and

M.P. No. 1 of 2008

G.Venkitapathy

.. Petitioner/Respondent

Versus

1. N.Radhamani

2. Minor V.Gowri Manohari

(rep. by her Mother and

Natural Guardian the

1st respondent herein)

.. Respondents/Petitioner

Revision Petition filed under Section 397 read with Sec. 401 of Cr.P.C. against the Order dated 06.9.2008 passed in M.C. No. 163 of 2005 on the file of the Family Court, Coimbatore.

For Petitioner : Mr. S.Kumaradevan

For Respondents : Mr. G.Ponnambalathiyagarajan

ORDER

This Criminal Revision Petition is filed by the petitioner questioning the correctness of the order dated 06.9.2008 passed in MC No. 163 of 2005 by the Court below.

2. The respondents herein filed a maintenance case in M.C.No.163 of 2005 on the file of the Family Court, Coimbatore, claiming maintenance of Rs.2,500/-per month from the petitioner. According to the respondents on 26.6.1994, a marriage was solemnised in between the petitioner and the first respondent at Avinashi Temple Mandambam, according to Hindu Marriage Rites and Customs. On 23.8.1995, the second respondent herein was born to them. As per the request of the first respondent, the petitioner lead the matrimonial life at the first respondent's house. Thereafter, he left the home. According to the respondent, the petitioner is owning agricultural lands and is earning a sum of Rs.1,00,000/- and therefore, the Court below allowed the MC.No.163 of 2005 by directing the petitioner to pay maintenance at the rate of Rs.1,000/- per month each to the respondents 1 and 2 and to pay a sum of Rs.2,000/- towards litigation expenses. As against the order passed in M.C. No. 23 of 2005 granting maintenance, the petitioner has filed the present Criminal Revision Petition.

3. According to the petitioner, the respondent filed a petition in H.M.O.P.No.369 of 1999 before the Family Court, Coimbatore under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and he filed a petition for divorce in H.M.O.P.No.52 of 1992. According to the petitioner, the divorce petition was dismissed and the restitution of conjugal rights filed by the respondent was allowed. According to the petitioner, pending trial, the petitioner sold his lands and paid a sum of Rs.4,00,000/- to the first respondent and joint deed of acceptance was also executed and as per the deed, the petitioner and the first respondent mutually agreed to separate their life.

4. The learned counsel for the petitioner submitted that pending petition for maintenance, there was an agreement between the parties and in fact, the same has been reduced in writing on 05.12.2006 and as per the agreement, the petitioner paid a sum of Rs.4,00,000/- to the first respondent. The learned counsel further submitted that the petitioner has also produced the said agreement and the same is marked as Ex.R2. The learned counsel also submitted that the witnesses have also spoken about the said payment. Therefore, according to the learned counsel, very claim for maintenance itself is wrong and the Court below ought to have dismissed the petition claiming maintenance.

5. The learned counsel for the respondents submitted that divorce petition was filed by the petitioner and the same was dismissed whereas the restitution of conjugal rights filed by the first respondent was allowed. The learned counsel further submitted that since the divorce petition was dismissed, the petitioner ought to have given residence to the respondents but the same was not given by the petitioner. The learned counsel also submitted that though compromise was entered, the petitioner has paid a sum of Rs.1,00,000/- only and refused to pay the balance amount. Further, no receipt has been produced by the petitioner towards payment of the balance amount. The learned counsel further submitted that as per the evidence, it is clear that entire amount was not paid. It is also submitted that while admitting the revision, this Court granted interim stay on condition to deposit a sum of Rs.50,000/- but even the said amount was not paid till date. Therefore, the learned counsel would pray for dismissal of the petition.

6. Heard both sides and perused the materials available on record. By consent of both sides, the revision itself is taken up for disposal.

7. At the outset, it is very clear that during the pendency of the trial, agreement was entered into between the parties but the same was not properly implemented by the petitioner. The entire records would show that the petitioner paid a sum of Rs.1,00,000/- only by way of Demand Draft and the balance amount has not been paid so far. Further, the petitioner has not even complied with the conditional order dated 05.01.2008 passed by this Court. The petitioner also not paid any maintenance during the pendency of the revision petition. Though the petitioner states that he already paid the entire amount, no receipt has been produced by him. Therefore, the Court below has rightly passed the order directing the petitioner

to pay maintenance at the rate of Rs.1,000/- per month each to the respondents 1 and 2 and to pay a sum of Rs.2,000/- towards litigation expenses.

8. In view of such circumstances, I do not find any reason to interfere with the reasoned order passed by the Court below. The revision is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The petitioner is directed to pay the entire arrears amount as per the order of the Court below to the first respondent within a period of four weeks from the date of receipt of a copy of this order and continue to pay the same on or before 5th of every English calendar month.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ga

The Family Court Judge, Coimbatore.

+ 1 cc to Mr.G.Ponnambalathiyagarajan, Advocate Sr.27995

1 cc to Mr.S.Kumara Devan, Advocate Sr.27926

Cr1.RC No. 1575 of 2008

KK(CO)
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