

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 1126 of 2013

and 751 of 2014

and M.P.No.1 of 2015 in Cr1.R.C.No.1126 of 2013

Cr1.R.C.No.1126 of 2013

Dinesh

.. Petitioner

Versus

1.Mahalakshmi

2.Kritheesha

3.Sameeksha

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 19.06.2013 passed in M.P. No. 98 of 2012 in M.C.No.327 of 2012 on the file of the I Additional Family Court, Chennai.

For Petitioner : No appearance

For Respondents : Mr. B.Gopalakrishnan

Cr1.R.C.No.751 of 2014

1.Mahalakshmi

2.Kritheesha [minor]

3.Sameeksha [minor]

.. Petitioners

Versus

Dinesh

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 19.06.2013 passed in M.P. No. 98 of 2012 in M.C.No.327 of 2012 on the file of the I Additional Family Court, Chennai.

For Petitioners : Mr.B.Gopalakrishnan

For Respondent : No appearance

COMMON ORDER

Criminal Revision Case No.1126 of 2013 is filed by the husband questioning the correctness of the quantum of maintenance awarded by the I Additional Family Court, Chennai, in M.P. No. 98 of 2012 in M.C.No.327 of 2012, by order dated 19.06.2013. Criminal Revision Case No.751 of 2014 is filed by the wife challenging the same order dated 19.06.2013 and seeking for enhancement of maintenance.

2. For the sake of easy reference, the parties are referred as husband, wife and children. The petitioner/husband has filed CrI.R.C.No.1126 of 2013. Today, when the matter is called, for the husband, there is no representation. The Hon'ble Apex Court in the decision reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, as the case is pending from 2013 and the petitioner in Crl.R.C.No.1126 of 2013/husband is successful in dragging on the case, both these Criminal Revision Cases are taken up and disposed of on merits, after hearing the learned counsel appearing for the wife & children, and also after perusing the materials available on record.

3. Mr.B.Gopalakrishnan, learned counsel appearing for the wife & children would submit that this Court granted interim stay on 17.09.2013 on condition that the husband shall deposit a sum of Rs.2,00,000/- to the credit of the Maintenance Case and the said amount has been deposited. He would further submit that the interim stay was made absolute on 21.10.2013, however, on condition directing the husband to pay the monthly maintenance amount of Rs.25,000/- as awarded by the Family Court till the disposal of the revision, but, the said conditional order is not complied with by the husband and because of the stay granted, the trial of the Maintenance Case has been stalled. He would further submit that the salary of her husband is Rs.73,795/- per month even in 2011 and he is also getting rental income, but, a very meagre amount totalling to Rs.25,000/- was awarded by the Family Court from the date of petition i.e., 09.07.2012 towards maintenance and hence, seeking for enhancement of maintenance, wife and children have filed Crl.R.C.No.751 of 2014. He would further submit that the husband alleging that the quantum of maintenance awarded is on the higherside and seeking to set aside the maintenance awarded by the Family Court has filed Crl.R.C.No.1126 of 2013.

4. Without going into the merits of the case, suffice to state that the learned I Additional Judge, Family Court, Chennai, shall get on with the trial of the case in M.C.No.327 of 2012 immediately and shall dispose of the same, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. The husband is directed to pay a sum of Rs.25,000/- towards interim maintenance directly to the wife on or before 5th of every succeeding English calendar month, till the disposal of the Maintenance Case. The husband is further directed to pay the arrears as on date at the rate of Rs.25,000/- within a period of two weeks from the date of receipt of a copy of this order,

failing which, the wife is at liberty to file appropriate application before the Family Court and the Family court intun shall take coercive steps for collection of the amount. With the above observation, these Criminal Revision Cases are disposed of. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

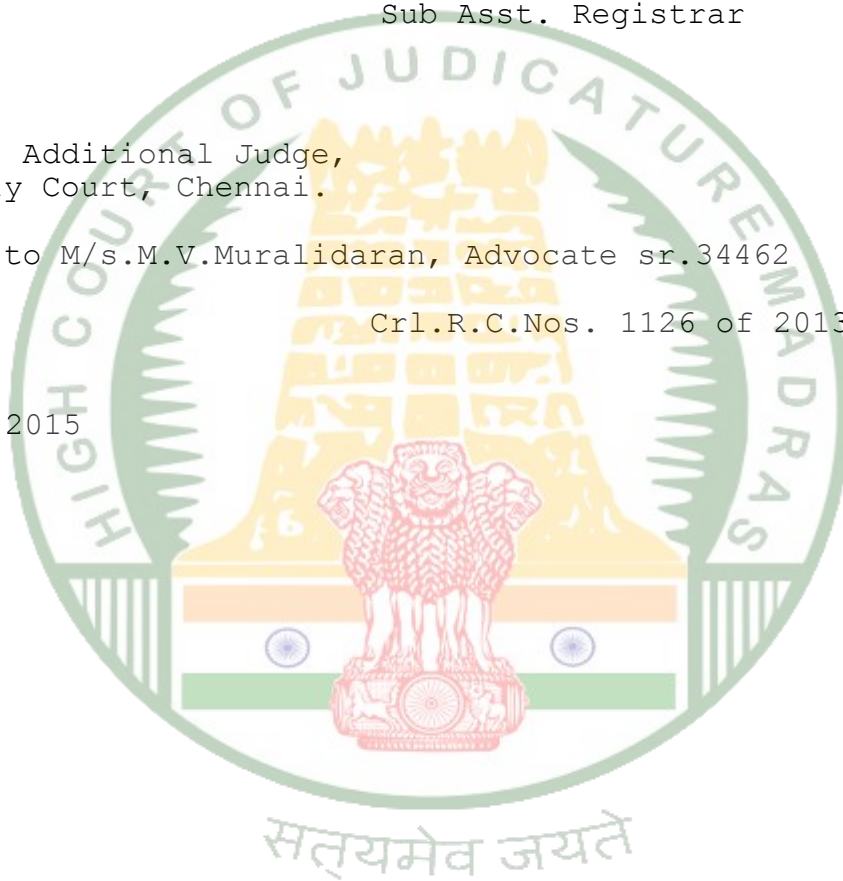
To

The I Additional Judge,
Family Court, Chennai.

+lcc to M/s.M.V.Muralidaran, Advocate sr.34462

Cr1.R.C.Nos. 1126 of 2013 and 751 of 2014

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srg 07.08.2015



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