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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2015

CORAM:

THE HONOURABLE Dr.JUSTICE P.DEVADASS

C.R.P.PD(MD)No.1906 of 2015

and M.P. (MD)No.1 of 2015

Umashankar ... Petitioner/Respondent/Appellant

Vs.

Mahalakshmi ... Respondent/Petitioner/Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the judgment dated 18.03.2015 passed in I.A.No.82 of 2013 in H.M.O.P.No.36 of 2013 on the file of the Sub Court, Uthamapalayam, Theni District.

For Petitioner : Mr.K.K.Samy

ORDER

This CRP is by an husband as against his wife and also as against his children.

2.The husband and wife are fighting. In H.O.P.No.36 of 2013 before the learned Subordinate Judge, Uthamapalayam, the husband wants divorce. She says no.

3.The couples are blessed with two children. But not with happy married life. The children are school going children. Now they are with their mother in Chinnamanur Town in Theni District. In her husband's divorce petition, she filed I.A.No.82 of 2013 under Section 24 of the Hindu Marriage Act, seeking maintenance for herself and to her children and also for litigation expenses.

4.The Trial Court considered the averments in the maintenance petition and the counter and directed the husband to pay Rs.7,000/- per month totally his wife and children towards their maintenance and Rs.3,000/- in one lump sum towards litigation expenses.

5.Aggrieved, the husband has filed this CRP.

6.According to the learned counsel for the revision petitioner, the revision petitioner is employed in a private school as a Teacher and he is getting only Rs.7,000/- per month. Further the school fees for the children has been paid by him for a year. In such circumstances, quantum of maintenance ordered by the Trial Court is on the higher side.



7.I have anxiously considered the submission of the learned counsel for the revision petitioner, perused the materials on record and also the impugned order of the Trial Court.

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8.The petitioner and the respondent have failed to furnish evidence as to their financial details. But that does not mean the petition has to be dismissed. The Court has to consider the ability of the husband to pay maintenance and inability of the wife to maintain herself. Such a yardstick cannot be applied to children.

9.The petitioner is a Teacher. Even if a person is not employed, even was not earning, Courts have held that when he is able bodied, he can do even hard labour and feed his wife and children. It is his basic duty.

10.Chinnamanur is Town in Theni District. There also prices of essential commodities are on the rise. Even this Rs.7,000/- per month for a woman and two children will be hand to mouth. If the husband has deficit financial sources to meet this financial commitment, he can do extra work and even he borrow and to pay the maintenance to his wife and children and discharge his obligation.

11.In the result this CRP fails and it is dismissed. No costs. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Theni.

2.The Sub Judge, Uthamapalayam, Theni District.

+1cc to Mr.K.K.Samy, Advocate Sr.No.59404

nbj

AA/MP/19.10.2015/2p-4c

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