



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

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Criminal Revision Case (MD)No.252 of 2011

and

M.P.(MD)No.1 of 2011

Paramasivam

.. Petitioner/Respondent

Vs.

1.Umarani

2.Minor Uma Bharathi

3.Minor Nithya

.. Respondents/Petitioner

(R2,3 respondents are minors represented

by their mother and Guardian the 1st respondent herein)

Revision is filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 07.12.2010 passed in M.C.No.3 of 2008 by the learned Judicial Magistrate, Mudukulathur.

For Petitioners : Mr.T.Selvan

For Respondents : Mr.K.R.Singaravadivel

ORDER

This revision petition is filed by the husband challenging the order of maintenance awarded to the wife and children at Rs.1,500/- p.m. each.

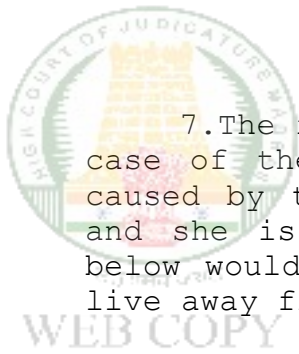
2.Initially, the wife and minor children of the revision petitioner filed an application for maintenance in M.C.No.3 of 2008 before the learned Chief Judicial Magistrate, Mudukulathur. The claim was opposed by the revision petitioner on the ground that the first respondent/wife is employed as a teacher and that she was sufficiently earning and therefore, she is not eligible to claim any maintenance. The revision petitioner also disputed the liability to pay maintenance to the children also, on the ground that he has no financial capacity to pay maintenance.

3. The Court below considered the rival contentions and directed the revision petitioner to pay a sum of Rs.1,500/- to the wife and Rs.1,500/- to each of the second and third respondents. This order dated 07.12.2010 is under challenge in this revision petition.

4. The main contention raised in this revision petition is that the Court below should have given a finding that the revision petitioner has no means to maintain the respondents herein and therefore, should have exonerated the husband from paying maintenance to the wife and children.

5. Whether the ground, as alleged in the revision petition, is worthy of acceptance, is the issue to be decided?

6. In a case for maintenance, the wife is expected to prove that she is justified in living away from the company of the husband and that she is not able to maintain herself, but the husband, who has got sufficient means, neglected and refused to maintain her and her children.



7.The relationship between the parties is an admitted fact. It is the case of the wife that on account of the demand for dowry and cruelty caused by the husband, she was compelled to leave the matrimonial home and she is residing separately. The evidence adduced before the Court below would only go to show that the wife has got justifiable reason to live away from the husband.

8.It is the specific case of the husband that the wife is employed as teacher in a school and she is earning a sum of Rs.3,000/- p.m. and therefore, he is not liable to pay any maintenance. But this contention cannot be accepted, as there is no evidence, that the wife is working as a teacher and that she is earning a sum of Rs.3,000/- p.m.

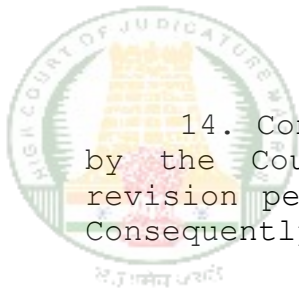
9.So far as the means of the revision petitioner is concerned, it is an admitted case that he is in possession of a house worth about Rs.25 lakhs. It is his case that he constructed a house by borrowing loan, but no evidence has been produced. If it is not his own property, he would not have constructed the house by spending money in lakhs. Therefore, when he has already earned to the extent of having a house worth Rs.25 lakhs, then the contention that he has no income to pay maintenance cannot be true. Even assuming that he has no income and when it is shown that he has got a potential capacity to earn money, it is his duty to pay maintenance to the wife and children.

10.In Rousseau Mitra Vs. Shrimati Chandana Mitra -MANU/WB/0221/2003: AIR 2004 Calcutta 61, the learned Single Judge of Calcutta High Court has held that when the husband voluntarily having incapacitated himself from earning, he cannot avoid his liability to maintain his wife and child. The means and capacity of a person against whom the award has to be made should be taken into consideration for determining the quantum of maintenance. In fact, in case of the husband, it is not only the actual earning, but also his potential earning capacity, which must be considered i.e. there is a presumption that every able-bodied person has a capacity to earn and maintain his wife. The income of the husband is a significant factor to be considered by the court in fixing the quantum of maintenance. Therefore, the contention, the husband has not income to pay maintenance is liable to be rejected.

11.So far as the second and third respondents are concerned, the learned counsel for the revision petitioner would submit that they have already attained the age of majority and therefore, they must be in a position to maintain themselves and therefore, the order passed by the learned Magistrate is liable to be set aside.

12.So far as respondents 2 and 3 are concerned, though they have attained majority, being girl children, attainment of majority is no ground to refuse maintenance. Till their marriage, the liability to maintain them is only upon the revision petitioner. Only in case of sons, the liability to maintain would cease on sons attaining majority. Therefore, the contention of the respondent deserves to be rejected.

13.Meagre amount of Rs.1,500/- has been ordered to be payable to the second and third respondents.



14. Considering the present day cost of living, the amount as ordered by the Court below cannot be said to be excessive. Therefore, the revision petitioner has no case. Accordingly, the revision is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

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/True copy/

Sd/-

The Assistant Registrar(co)

Sub-Assistant Registrar

To

The Judicial Magistrate, Mudukulathur.

+1cc to Mr.K.R.Singaravadivel, Advocate SR.No.54126

sm:sks:15.10.2015:3P/3c

Cr1.R.C.(MD)No.252 of 2011