



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2015

CORAM:

THE HONOURABLE Mrs.JUSTICE S.VIMALA

Cr1.R.C.(MD)No.568 of 2013

and M.P.(MD)No.2 of 2013

WEB COPY

K.Senthil

.. Petitioner

Vs.

S.Bhuvaneshwari

... Respondent

PRAYER: This Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to call for the records of the order dated 26.12.2012 passed by the learned II Additional District Munsif cum Judicial Magistrate, Kumbakonam in M.C.No.21 of 2008 and set aside the same.

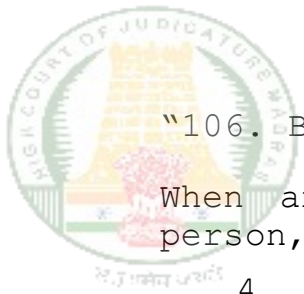
For Petitioner	: Mr.I.Joshua
For Respondent	: Mr.A.Saravanan

ORDER

The Trial Court has ordered maintenance of Rs.3000/- payable to the respondent / wife by the revision petitioner from 30.05.2008. Challenging this order of maintenance dated 26.12.2012 passed by the learned II Additional District Munsif cum Judicial Magistrate, Kumbakonam in M.C.No.21 of 2008, this Criminal Revision case has been filed.

2. When the wife claimed maintenance, it was opposed by the petitioner / husband on the ground that he has sought for a decree of divorce as against his wife. The petitioner / husband has made a claim that the husband has no property in his name and he is earning a meagre income by doing job in a private company. On these pleadings, the Trial Court has taken up the matter for enquiry.

3.The husband has neither adduced oral evidence nor documentary evidence. The Trial Court on consideration of the materials placed, had ordered payment of maintenance at Rs.3000/- per month. The Trial Court has given a finding, a) that the husband has sufficient means to maintain and b) that the wife is not able to maintain herself. Therefore, it is for the husband to show that he has no sufficient means to maintain the wife. The burden of proof is upon the husband as contemplated under Section 106 of the Evidence Act, which reads as under:



"106. Burden of proving fact specially within knowledge -

When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him."

4. The husband has not chosen to adduce any evidence. If the best evidence available is not produced, the Court is bound to draw adverse inference. Further, for the non-examination of the husband, no explanation has been offered. Therefore, the inference is that, the examination of the husband would be detrimental to the defense taken by him and that is why, he has not chosen to examine himself. Nothing prevented him from adducing the salary certificate.

"6. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference under Section 114(g) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence. It was so held in the case of Union of IndiaAppellant Versus Ibrahim Uddin & Anr. (CIVIL APPEAL NO. 1374 of 2008)

5. Under such circumstances, the amount ordered in the year 2012 at Rs.3000/- per month, cannot be said to be excessive. Therefore, the order passed by the learned II Additional District Munsif cum Judicial Magistrate, Kumbakonam in M.C.No.21 of 2008 does not require any interference.

6. The conduct of the husband before this Court itself is a proof to show that he did not want to maintain his wife. This Court has passed several interim orders directing the husband to pay arrears of maintenance. Only on few occasions, the conditional order has been complied with. The husband has been changing the counsel and thereby procrastinating the matter. This Court has recorded the conduct of the husband in the order dated 07.01.2015. The husband had been given several opportunity to make payment, but payment has not been made. Therefore, there is no purpose in waiting for the husband or his counsel to argue the matter. Therefore, this Court has gone through the order passed by the Trial court and passed the order on merits.

7. As a matter of fact, even if the orders are passed on merits, the petitioners / appellants are in the habits of filing applications to rehear the matter, taking advantage of their own mistake (in not appearing and not placing the arguments). The legal consequences of this conduct is not so simple, as it is believed by the petitioners, who commit default. This Court wish to place on record the dictum laid down by this Court in the case of Hema vs Parthasarathy, (2002) 3 MLJ 319:



fails to make payment of interim maintenance or litigation expense, as ordered by the Court, then the wife can file an application praying the Court to dismiss the petition or strike off the defence, as the case may be. In such case, the Court will consider the same and dispose it off on merits....."

8. With this observation, the Criminal Revision petition filed by the petitioner / husband is dismissed. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar-AS

/TRUE COPY/

Sub Assistant Registrar

nbj

To:

1 The II Additional District Munsif
-cum-Judicial Magistrate,
Kumbakonam.

2 The District Judge, Thanjavur

+1 CC TO MR.A.SARAVANAN, ADVOCATE SR NO:48949

Cr1.R.C.(MD)No.568 of 2013
and M.P.(MD)No.2 of 2013
25.08.2015

JAM/AAL-MPA/13.10.15/3P-4C