

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.1366 of 2015
and MP.No.1 of 2015

T.Rajesh

.. Petitioner

Vs.

1. Celina Sharmila
2. Minor Akash Raj Steephan
3. Minor Veronika Raj

.. Respondents

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 24.04.2015 made in Mc.No.6 of 2012 passed by the Family Court, Salem.

For Petitioner : Mr.V.Sekar
For Respondents : Mr.M.Devaraj.

ORDER

The Criminal revision is directed against the order passed by the Family Court, Salem made in MC.No.6 of 2012 dated 24.04.2015, directing the revision petitioner/husband to pay a maintenance to the respondents 1 to 3/wife and children.

2.The learned counsel for the petitioner would contend that the trial Court erred in passing order directing the revision petitioner to pay a sum of Rs.5,000/- to his wife/1st respondent and Rs.7,500/- each to his two children/respondents 2 and 3 herein and Rs.1,500/- as past maintenance to his wife till the date of the order and Rs.1,000/- each to his two children as the past maintenance till the date of the order. The trial Court ought to have given an opportunity to the husband to put forth his case, the trial Court failed to consider that the revision petitioner is not able to pay the maintenance amount, who lost his job. The learned counsel for the petitioner prays to set aside the order of the trial Court and to allow the criminal revision.

3.The learned counsel for the respondent would contend that the trial Court after considering the entire facts and circumstances directed the revision petitioner to pay the maintenance to the respondents 1 to which is very reasonable and there is no illegality or infirmity in the order of the trial Court and prays this Court to dismiss the revision.

4. Heard the rival submissions made on both sides and perused the records.

5. On perusal of the order of trial Court, the first petitioner/wife is examined as PW1 and Exs.P1 to P6 were marked. The respondent/husband has not been examined and no documents were produced. The trial Court in its judgment specifically stated that so many opportunity has been given to the respondent/revision petitioner to adduce his evidence. The failure on the part of the respondent to appear before the Court, his evidence was closed and final order was passed on 24.04.2015. Against the said order passed by the trial Court, the revision petitioner preferred the present revision before this Court.

6. At the time of admission, this Court on 29.04.2016 passed the following order which reads as follows :-

"If the petitioner deposits a sum of Rs.1 Lakh, as ordered by this Court, within the time adumbrated by this Court, then there shall be an order of interim stay, till 15/6/2016. It is made patently clear if the said sum of Rs.1 Lakh agreed to be paid by the learned Counsel for the petitioner/Husband is not paid, then interim stay granted by this Court shall stand vacated, automatically, without any further reference to this Court."

In compliance with the order of this Court, the revision petitioner/husband deposited Rs.1 lakh to the credit of MC.No.6 of 2012 on the file of Family Court, Salem. In the interest of Justice, fair play, good conscience and even as a matter of prudence, direct the petitioner/husband, to deposit a sum of Rs.1 Lakh before the Family Court, Salem in MC.No.6 of 2012, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents 1 to 3 are permitted to project a Miscellaneous Petition for payment out of the money deposited, in the manner known to law and in accordance with law, within a period of one week. Thereafter, the trial Court is directed to dispose of the petition for payment out petition, as expeditiously as possible, in any event within a period of ten days thereafter. The revision petitioner deposited Rs.1 Lakh as per the order of this Court within the time adumbrated by this Court, then there shall be an order of Interim stay till 15.06.2016. It is made patently clear if the said sum of Rs.1 Lakh agreed is not paid, then the interim stay granted by this Court shall stand vacated automatically without any further reference to this Court.

7.The petitioner/husband has deposited the said amount before the trial Court in MC.No.6 of 2012 on the file of Family Court, Salem, on 30.05.2016, he has also produced the copy of the receipt to that effect.

8.The learned counsel for the petitioner mainly contended that he has not given any opportunity to put forth his case before the trial Court, the trial Court has not given proper opportunity to the petitioner to adduce evidence on the side of the respondent/revision petitioner. Further the amount already awarded by the trial Court directing the revision petitioner to pay a sum of Rs.5,000/-p.m. to the first respondent/wife and Rs.7,500/- each to the respondents 2 and 3/sons totally Rs.20,000/- and Rs.1,500/- as past maintenance to first petitioner/wife and Rs.1,000/- each to the respondents 2 and 3/sons as past maintenance, totally Rs.3,500/- till the date of the order. The trial Court ought to have given opportunity to the revision petitioner, the order of the trial Court has to be set aside and a chance may be given to the revision petitioner to adduce evidence on his side.

9.On the side of the respondent there was sufficient opportunity was given to the respondent, but he failed to avail the opportunity, hence the trial Court passed an order with the available materials. The revision petition filed by the revision petitioner is liable to be dismissed.

10.On reading of the order, the trial Court clearly mentioned sufficient opportunity was given to the petitioner, since there is no documents or evidence adduced on the side of the respondent, the trial Court passed the order on 24.04.2015. Admittedly, after passing the order, the revision petitioner/husband deposited a sum of Rs.1 Lakh before the trial Court and also paying some amount to the respondents 1 to 3. This Court is of the considered view one more opportunity shall be given to the revision petitioner/husband to adduce evidence for fixing fair maintenance amount to the respondents 1 to 3. In view of the above circumstances and in the interest of justice, the criminal revision has to be allowed and the order of the trial Court fixing the maintenance amount has to be set aside and the matter has to be remitted back to the trial Court for fixing fair maintenance.

11.In the result, the criminal revision is allowed by setting aside the order made in MC.No.6 of 2012 on the file of Family Court, Salem, dated 24.04.2015. Accordingly, the matter is remanded back to the trial Court for adducing oral and documentary evidence on the side of the revision petitioner/husband before the trial Court. The trial Court is

directed to dispose of the MC.No.6 of 2012 within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

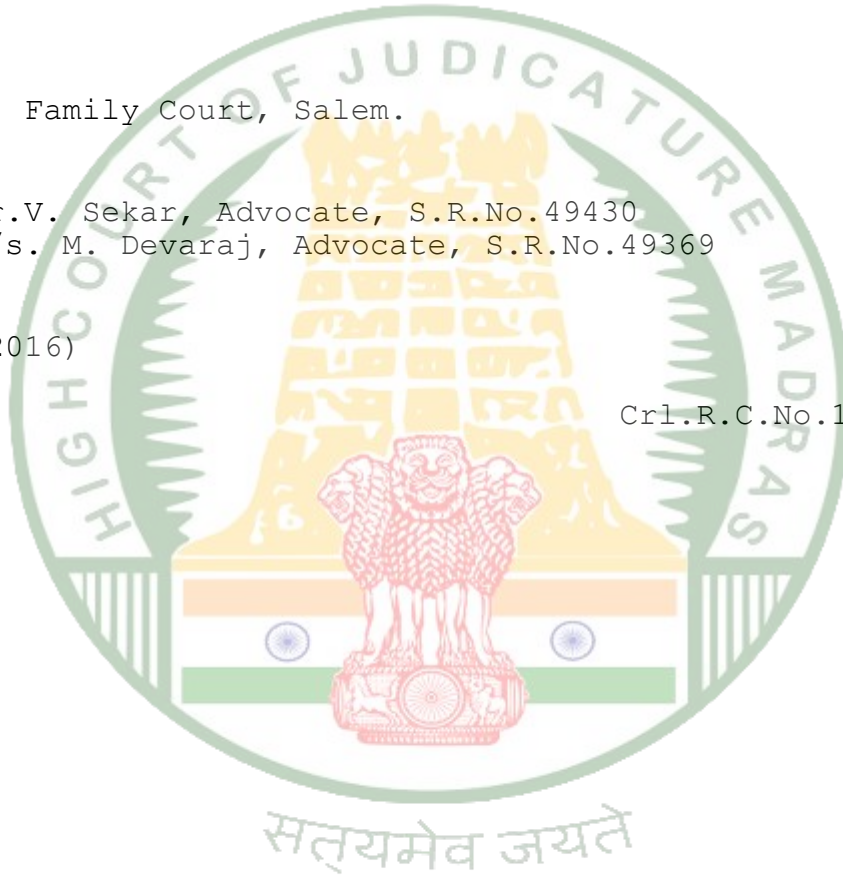
tsh

To
The Judge Family Court, Salem.

+1cc to Mr.V. Sekar, Advocate, S.R.No.49430
+1cc to M/s. M. Devaraj, Advocate, S.R.No.49369

AD(CO)
EU(28/09/2016)

Cr1.R.C.No.1366 of 2015



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