

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

CRP (NPD) No.4331 of 2015

S.Senthilvel
S/o.Late A.Subramaniyan
Balaji Hostel, West Cutcheri Street,
Dharapuram Town,
Tirupur District. .. Petitioner

Vs

Eswari @ Kaleeswari
D/o. R.Kuzhandhaivelu
Aalampalayam, Pollachi Taluk,
Coimbatore District. .. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the impugned order dated 03.09.2015 passed in Memo in I.A.No.34 of 2014 in H.M.O.P.No.34 of 2013 on the file of Sub Judge, Dharapuram, Tirupur District.

For Petitioner	:Mr.S.Veeraraghavan
For Respondent	:Mr.N.Ponraj

ORDER

The Revision Petitioner herein has filed a petition for divorce in H.M.O.P.No.34 of 2013 on the file of Sub Court, Dharapuram, Tirupur District, seeking divorce against the respondent on the ground of cruelty and desertion.

2. Pending the petition, the wife has taken out an application in I.A.No.34 of 2014 praying for interim maintenance. That application came to be allowed directing the husband to pay a sum of Rs.4,000/- per month as maintenance within fifth day of every English calendar month.

3. Non-compliance of the interim order passed through non-payment of maintenance was brought to the notice of the Court below by filing a Memo. The memo was recorded and after perusing the memo, the Court below passed an order of dismissal of the main petition in H.M.O.P.No. 34 of 2013 Challenging the same, this Civil Revision Petition has been filed.

3.1. At the time of admission, this Court pointed out that when the Court below has chosen to strike out the pleadings for non-compliance of the order of maintenance, it is appropriate that the revision petitioner should comply with the order of the Court. Thereafter, the revision petitioner has informed the Court that the entire amount of maintenance as ordered by the Court below has been paid.

3.2. The husband has also given an undertaking that he will continue to pay the interim maintenance without any default or negligence.

4. The learned counsel for the revision petitioner pleaded for an opportunity to the husband to contest the case on merits.

5. The question to be decided is whether the order passed by the Court below striking out the pleadings is liable to be set aside?

5.1 The order passed by the Court below for non-compliance of the interim order cannot be said to be illegal or improper. Rightly, the Court below has passed an order, but in view of the change in circumstances, i.e, the husband having obeyed the orders of the Court by paying the arrears of maintenance and also having given an undertaking to pay the future maintenance as per the terms and conditions of the order passed in I.A.No.34 of 2014, the order passed by the Court below has to be set aside.

5.2. The extreme step of striking out pleadings is resorted to only to ensure compliance to the order of the Court. It is not as if the Court takes any pleasure in driving the parties out from the Court. Once it is made clear to the Court that parties are willing to obey the orders of the Court, then opportunity must be given to putforth their case on merits.

5.3. This Court is of the view that the husband should be given an opportunity to contest the case on merits, as after all parties are interested only in getting substantial justice. The dismissal of the main petition had been passed only to make the husband to obey the orders of the Court. Now, inasmuch as the orders of the lower Court is obeyed, an opportunity should be given to the petitioner/husband to contest the case on merits.

6. The counsel appearing on both sides has given an undertaking before this Court to co-operate with the trial Court in disposing of the case within six months and in fact, they also want a direction from this Court for speedy disposal of the case.

7. The order dated 03.09.2015 passed in the Memo filed in I.A.No.34 of 2014 stands set aside. In view of the subsequent compliance of the order passed on interim maintenance, the revision petition stands allowed, with a direction to the Court below to dispose of the H.M.O.P.No.34 of 2013 within a period of six months from the date of receipt of a copy of this order. No costs.

23.02.2016

ds

To

The Sub Court
Dharapuram
Tirupur District.

S.VIMALA ,J.,

ds

CRP (NPD) No.4331 of 2015

17.02.2016