

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1148 of 2016

&

C.M.P.No.6306 of 2016

N.Sivamani

... Petitioner

vs.

S.Savithri

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against judgment and decree made in I.A.No.104 of 2015 in H.M.O.P.No.5 of 2015 dated 20.11.2015 on the file of learned Subordinate Judge, Neyveli.

For Petitioner : Mr.Usha Ramman

ORDER

The petitioner in H.M.O.P.No.5 of 2015 pending on the file of the Sub-Court, Neyveli is the petitioner in the revision. He has filed the above said original petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

2. Even before the filing of the H.M.O.P, the respondent (wife) filed a case in M.C.No.24 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Neyveli under Section 12 of the Protection of Women from Domestic Violence Act, 2005. After service of summons in the H.M.O.P, the respondent wife filed an application I.A.No.104 of 2005 in H.M.O.P.No.5 of 2015 praying for a direction to the petitioner herein (Husband) to pay her interim maintenance at the rate of Rs.15,000/- per month and a sum of Rs.10,000/- towards litigation expenses. The petition was resisted by the revision petitioner herein contending that though he was employed in Neyveli Lignite Corporation as a Technician Grade III (C), he was drawing a net salary of Rs.6,840/- alone. Rejecting the said contention and holding that the respondent was entitled to get at least a sum of Rs.5,000/- per month as interim maintenance, the learned trial Judge chose to pass the impugned order dated 20.11.2015 directing the revision petitioner to pay the said amount as interim maintenance every month till the disposal of the H.M.O.P and also the accumulated arrears from the date of filing of the interim maintenance application within a time prescribed in the impugned order. The learned trial Judge also awarded Rs.10,000/- toward litigation expenses.

3. Contending that the take home of the revision petitioner is only Rs.6,840/- and the award of Rs.5,000/- per month as interim maintenance cannot be justified, the petitioner in the revision petition has approached this Court to set aside or modify the order of the interim maintenance passed by the trial Court.

4. The matter stands listed today for admission. The arguments advanced by Mr.Usha Raman, learned counsel for the petitioner are heard. Certified copy of the impugned order and copies of the other documents produced in the form of typed-set of papers are also perused.

5. Upon such hearing and after such perusal, this Court does not see any merit in the revision. Admittedly, the petitioner is employed as a Technician Grade III (C) in Neyveli Lignite Corporation. Though he was able to produce a pay slip showing his net salary for a particular month to be Rs.6,840/-, his gross salary is admittedly more than Rs.50,000/-. Therefore, it shall be obvious that the petitioner, with a view to take a stand that he cannot afford to pay more amount as interim maintenance, availed loans so as to reduce the take home salary to Rs.6,840/-. If at all certain loans were availed and properties were purchased, the petitioner will be in receipt of income derived from such property also. The said particulars have not been furnished. A person, who is drawing a

salary of more than Rs.50,000/-, can very well afford to pay less than 1/10th of the said amount, namely Rs.5,000/- as interim maintenance to his estranged wife. The learned counsel for the petitioner made an attempt to contend that since the respondent has filed a case under the Domestic Violence Act, she shall not be entitled to seek interim maintenance in the H.M.O.P filed by the revision petitioner. This Court is not in a position to countenance the above said submissions.

6. Upon considering the facts and circumstances of the case, this Court does not feel that the amount awarded as interim maintenance and also the amount awarded as litigation expenses are either excessive or exorbitant warranting interference by this Court in exercise of its power of revision/superintendence. The civil revision petition does not even merit admission and the same deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

11.04.2016

Index: Yes/No
Internet: Yes/No
gpa

To

The Subordinate Judge

Neyveli

P.R.SHIVAKUMAR.J.,

gpa

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