

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1319 of 2016

and

C.M.P.No.7396 of 2016

Thirunavukarasu

... Petitioner

Vs

Rooba

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 26.11.2015 passed in I.A.No.318 of 2015 in F.C.O.P.No.288 of 2008 on the file of the Family Court, Salem.

For Petitioner : Mr.P.Jagadeesan

ORDER

The respondent is the wife of the petitioner herein. The respondent herein (wife) filed F.C.O.P.No.288 of 2008 on the file of the Family Court, Salem under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The petitioner / husband is resisting the said O.P. In addition, the petitioner in the revision petition also filed a O.P for divorce in H.M.O.P.160 of 2007 on the file of the Sub Court, Namakkal. In the O.P. filed by the wife for restitution of conjugal

rights, she filed an application I.A.No.13 of 2009 claiming a direction for payment of interim maintenance and litigation expenses.

2. The Family Court, Salem, by an order dated 19.03.2014, directed payment of interim maintenance at the rate of Rs.3,000/- per month and Rs.7,000/- as litigation expenses. The said amounts have not been paid so far. On the other hand, no challenge was made to the said order. However, the revision petitioner (husband) filed an application in I.A.No.318 of 2015 for issuance of summons to the Record Keeper, Mohan Kumaramangalam Government Medical College Hospital, Salem to produce documents relating to the alleged birth of a child to the respondent herein.

3. It was also contended therein that during the pendency of the O.P, the respondent (wife) married one Mohanasundaram and through him gave birth to a child. Based on the said allegations, he prayed for issuance of summons to the Record Keeper, Mohan Kumaramangalam Government Medical College Hospital, Salem to produce documents relating to the alleged birth of a child to the respondent herein.

4. The learned Judge of the Family Court, Salem, after hearing, found that the petitioner/husband could not be granted any relief unless he makes

payment of the arrears of interim maintenance as per the order dated 19.03.2014 atleast upto the alleged date of the second marriage of the respondent herein. Accordingly, the learned trial Judge chose to allow the said application imposing a condition that the petitioner shall pay the arrears of interim maintenance as per the order dated 19.03.2014 till the date of alleged second marriage of the respondent, within one month from the date of the order passed in I.A.No.318 of 2015 and directing dismissal of the same, in case it is not done. It is as against the said order, the present Civil Revision Petition has been filed.

5. Upon hearing the submissions made by Mr.P.Jagadeesan, learned counsel for the petitioner and after perusing the certified copies of the impugned orders and other documents, this Court is of the considered view that there is no defect or infirmity in the order of the trial Court, much less any illegality or irregularity in the exercise of the jurisdiction by the trial Court, warranting interference in exercise of the power of superintendence of this Court under Article 227 of the Constitution of India. In fact, the learned trial Judge ought to have stayed the proceedings till the time to be fixed for complying with the order directing the payment of litigation expenses and interim maintenance and struck off the defence in case, the same has not been complied with. The learned trial Judge has chosen to show leniency by requiring payment of the arrears of

interim maintenance upto the date of the alleged second marriage of the respondent, as the condition for allowing the application in I.A.No.318 of 2015. The very fact that the petitioner is not willing to make payment of the same will show that the petitioner shall not be entitled to the indulgence of the Court. This Court does not find fault with the order passed by the trial Court. The petitioner having determined not to comply with the condition incorporated in the impugned order, is bound to lose the benefit conferred on him by the impugned order.

6. For the reasons stated above, this Court comes to the conclusion that the revision fails and the same deserves to be dismissed at the threshold.

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

28.04.2016

Index: Yes/No
Internet: yes/No

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To
The Family Court,
Salem.

P.R.SHIVAKUMAR, J

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