

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 20.12.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (NPD) No.1916 of 2012  
and M.P.No.1 of 2012

A.Sajitha

... Petitioner

Vs.

C.V.Kishore Kumar

.. Respondent

Revision filed under Article 227 of Constitution of India against the order of the I Additional Family Court, Chennai in E.P.No.4 of 2010 in I.A.No.2579 of 2007 in O.P.No.2355 of 2005.

For Petitioner : Mr.H.Nazirudeen

For Respondent : Mr.S.Thomas Parimannan

**ORDER**

This revision has been filed by the petitioner to direct the I Additional Family Court, Chennai to dispose of E.P.No.4 of 2010 in I.A.No.2579 of 2007 in O.P.No.2355 of 2005 expeditiously.

2. The facts leading to the filing of the revision is as follows:

The petitioner has filed O.P.No.2355 of 2005 under Sec.9 of the

Hindu Marriage Act, 1955 for restitution of conjugal rights. Pending O.P.No.2355 of 2005, the petitioner filed I.A.No.2579 of 2007 seeking interim maintenance of a sum of Rs.6000/- per month to her and a sum of Rs.6000/- to her son and a sum of Rs.1,21,917/- towards medical expenses and the annual fees paid for her son and also Rs.10,000/- towards litigation expenses. The said interlocutory application was resisted by the respondent.

3. By an order dated 23.11.2007 in I.A.No.2579 of 2007 in O.P.No.2355 of 2005, the respondent was directed to pay maintenance *pendente lite* to the petitioner at the rate of 4000/- per month from the date of the petition i.e. 27.06.2007; Rs.5000/- towards litigation expenses under Section 24 of the Hindu Marriage Act, 1955 and Rs.6000/- per month towards maintenance of minor son from the date of petition i.e., 27.6.2007 under Section 26 of the Hindu Marriage Act, 1955.

4. On a perusal of the order (at page No.19 of the typed set of papers), reveals that the order dated 23.11.2007 in I.A.No.2579 of 2007 is an *ex parte* order.

5. Since the respondent failed to pay the maintenance as

ordered in I.A.No.2579 of 2007, the petitioner filed E.P.No.4 of 2010 seeking attachment of salary of the respondent and realise the decree amount granted in I.A.No.2579 of 2007.

6.I heard Mr.H.Nazirudeen, learned counsel for the petitioner and Mr.S.Thomas Parimannan, learned counsel for the respondent and perused the entire records.

7. Resisting E.P.No.4 of 2010, the respondent filed counter-affidavit stating that he had filed I.A.No.3387 of 2018 to set aside the *ex parte* order passed in I.A.No.2579 of 2007. It is stated that the respondent agreed to take the petitioner into matrimonial home for the sake of the welfare of his minor son and the petitioner has also given undertaking that she would mend her behaviour and discharge her duties as a wife. The respondent was directed by the Court to make an endorsement that he has no objection in allowing the petition for restitution of conjugal rights. Accordingly, the main O.P. was terminated vide order dated 19.12.2008 and I.A.No.3387 of 2008 filed for setting aside the *ex parte* order in I.A.No.2579 of 2007 was kept pending.

8. Thereafter, I.A.No.3387 of 2008 was dismissed for default on

20.07.2009. In the mean time, the petitioner and the respondent had been residing at Nagercoil. It is further stated that on 25.08.2009, the petitioner deserted the respondent and filed E.P.No.4 of 2010 for realising the maintenance amount granted in I.A.No.2579 of 2007. Only after receipt of notice, the respondent came to know about the dismissal of I.A.No.3387 of 2008 for default and the respondent has also taken steps to restore I.A.No.3387 of 2008. It is stated that subsequent to the filing of E.P.No.4 of 2010, the petitioner has filed application for maintenance under Section 125 Cr.P.C. and the same is pending. Hence, the respondent prays for dismissal of E.P.No.4 of 2010.

9. On a perusal of the records, I find that the respondent has filed petition in S.R.No.4187 of 2010 to restore I.A.No.3387 of 2008, which was dismissed for default on 20.07.2009. It is the case of the respondent that E.P.No.4 of 2010 was taken up for enquiry and the arguments of the petitioner concluded and the same was posted for the arguments of the respondent on 19.12.2011. On 19.12.2011, the respondent side argued the matter and the matter was adjourned to 03.01.2012 for passing orders.

10. On further perusal of the typed set of papers, I find that the respondent has filed I.A.No.534 of 2012 in O.P.No.2355 of 2005 to amend the decree in O.P.No.2355 of 2005 stating that when a compromise has been arrived between the parties and both the parties made endorsement of willingness to lead the matrimonial life, the Family Court ought to have dismissed the petition filed for restitution of conjugal rights, instead allowing the petition filed by the petitioner for restitution of conjugal rights, which is an error in the eye of law.

11. The petitioner has filed the copy of E.P.No.4 of 2010 and the orders passed thereon by the Family Court, wherefrom it is seen that some interim maintenance has been paid by the respondent husband and the same was received by the petitioner wife. Finally, E.P.No.4 of 2010 was posted on 10.03.2012 by noting the presence of petitioner wife and respondent husband and later adjourned to 09.04.2012.

12. Learned counsel for the petitioner submits that the Family Court failed to take into consideration the plight of the petitioner and adopted the practice of adjourning the matter. He would submit that the respondent is in possession of Rs.5 lakhs as well as other goods which were provided at the time of marriage and despite the same, the respondent is not taking care of even the minimum needs of

educational expenses of his son. He would further submit that the respondent is leading a waywardly life and remains not as person of normal possessiveness. He finally submits that in order to execute the decree, the petitioner has filed the present revision seeking direction on the Family Court to dispose of E.P.No.4 of 2010, but the respondent is not co-operating for early disposal of the Execution Petition.

13. This revision has been filed seeking direction on the I Additional Family Court, Chennai to dispose of E.P.No.4 of 2010 in I.A.No.2579 of 2007 in O.P.No.2355 of 2005 expeditiously.

14. This Court is not concerned with the merits of the matter and also the order made in O.P.No.2355 of 2005 and I.A.No.2579 of 2007. This Court is also not concerned with the petition said to have been filed by the respondent to restore I.A.No.3387 of 2008 etc.

15. It is pertinent to note that Family Courts were established for promoting conciliation and for speedy settlement relating to marriage and family affairs and the approach should be different from the ordinary civil proceedings.

16. The main grievance of the petitioner is that under one

pretext or the other, the respondent is dragging the Execution Petition and a direction may be issued to the Family Court to dispose of the Execution Petition.

17. Considering the fact that the Execution Petition is pending for more than seven years and also the nature of the proceedings, the Civil Revision Petition is allowed by directing the I Additional Family Court, Chennai to dispose of E.P.No.4 of 2010 in I.A.No.2579 of 2007 in O.P.No.2355 of 2005 within one month from the date of receipt of a copy of this order, by giving an opportunity to both the parties. Both the parties are directed to co-operate for early disposal of E.P.No.4 of 2010. No costs. Consequently, M.P.No.1 of 2012 is closed.

**20.12.2016**

Note: Issue order copy on 20.02.2018  
vs

Index : Yes/No  
Internet : Yes/No

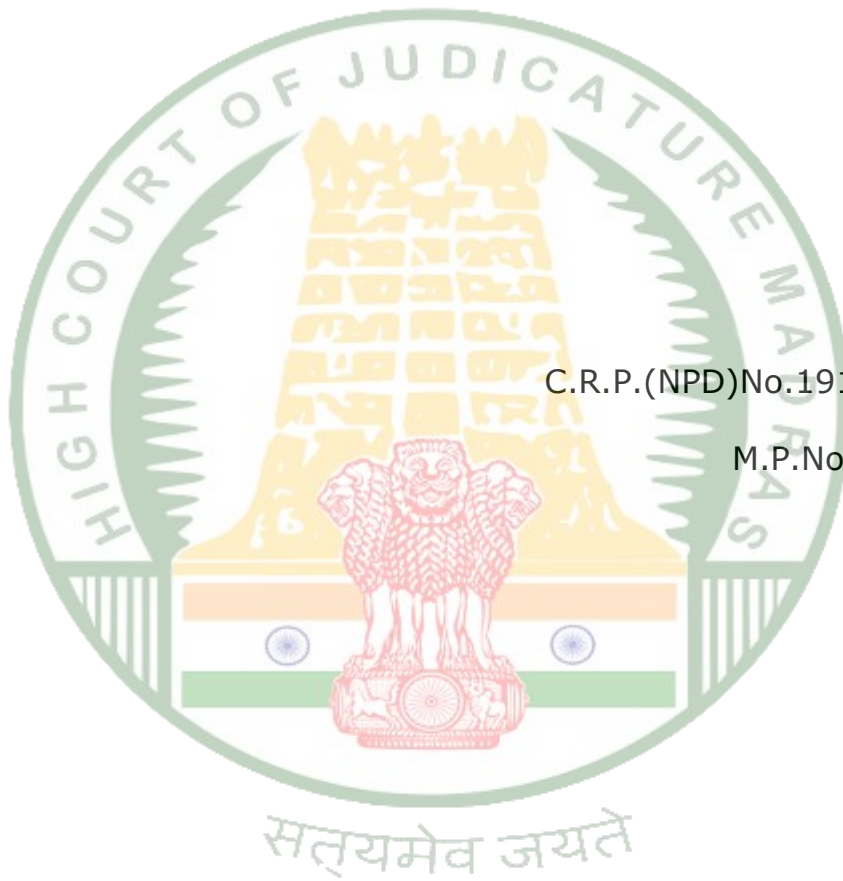
To

The XIII Assistant City Civil Judge,  
Chennai.

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M.V.MURALIDARAN,J.

VS



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and  
M.P.No.1 of 2012

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