

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2696 of 2016 and
CMP.No.13955 of 2016

B.P.Balaji

...Petitioner

versus

K.Rajalakshmi @ Rajamani

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.06.2016 passed by the Subordinate Judge, Tiruvannamalai in I.A.No.77 of 2011 in H.M.O.P.No.20 of 2004.

For Petitioner : Ms.S.Suseela Devi

ORDER

This Civil Revision Petition is directed against the order dated 7 June 2016 in I.A.No.77 of 2011 in HMOP.No.20 of 2004, whereby and where under, the learned Principal Subordinate Judge, Tiruvannamalai was pleased to stay the further proceedings in the HMOP till the entire arrears of interim maintenance awarded is paid by the petitioner.

2. The petitioner filed divorce petition before the Principal Sub-Court, Tiruvannamalai in HMOP No.20 of 2004. Before the said Court, the respondent filed an application for interim maintenance. The Trial Court allowed the said application and fixed a sum of Rs.1000/- towards interim maintenance. The said order has become final. Thereafter, the respondent filed a suit in O.S.No.42 of 2006 before the Sub-Court at Tiruvannamalai. The said Court taking into account the interim maintenance granted in HMOP No.20 of 2004 directed the petitioner to pay maintenance at the rate of Rs.1,500/- per month. The respondent filed E.P.No.58 of 2010 to execute the decree in O.S.No.42 of 2006. The petitioner paid the arrears and thereafter, the Execution Petition was closed.

3. The respondent, during the currency of the Execution Petition filed an application in I.A.No.77 of 2011 for stay of all further proceedings in HMOP No.20 of 2004 on the ground that the petitioner failed to comply with the order directing him to pay interim maintenance. The petition was contested by the petitioner by filing counter affidavit. According to the petitioner, in view of the decree in O.S.No.42 of 2006 and the payment made in E.P.No.58 of 2010, the

respondent is not entitled for an order of stay of all further proceedings. The learned Principal Subordinate Judge, by overruling the said contention passed an order of stay in the divorce proceedings. Feeling aggrieved, the petitioner is before this Court.

4. The learned counsel for the petitioner contended that the learned Trial Judge while decreeing the suit in O.S.No.42 of 2006 made a clear observation that the respondent is not entitled for double payment, one by way of interim maintenance and another by way of maintenance in a civil suit. The learned counsel further contended that the entire maintenance amount was paid by the petitioner and as such, he is not liable to pay interim maintenance as claimed by the respondent. In short, it is the contention of the petitioner that in view of the payment made pursuant to the decree in O.S.No.42 of 2006, the respondent is not entitled to execute the order directing interim maintenance.

5. There is no dispute that the learned Principal Subordinate Judge, Tiruvannamalai, passed an order directing the petitioner to pay interim maintenance at the rate of Rs.1,000/- to the respondent. The said order was passed in a substantive proceedings in HMOP.No.20 of

2004. Thereafter, the respondent filed a suit in O.S.No.42 of 2006 claiming maintenance. While calculating the total amount payable to the respondent, the learned trial Judge deducted the amount awarded by way of interim maintenance. The order passed by the learned Judge in O.S.No.42 of 2006 is very clear that the amount payable by way of interim maintenance was deducted while fixing the quantum. It was only the decree passed by the Trial Court directing the petitioner to pay maintenance at the rate of Rs.1500/-, which was executed in E.P.No.58 of 2010. However, the fact remains that the petitioner has not paid interim maintenance, notwithstanding the finality attached to the order in I.A.No.21 of 2005 in HMOP.No.20 of 2004.

6. When it was found that the petitioner has not been paying interim maintenance inspite of the direction given by the Trial Court, the respondent filed application to stay the trial till the arrears is paid. The Trial Court considered the entire facts including the judgment and decree in O.S.No.42 of 2006 and concluded that the decree in O.S.No.42 of 2006 has nothing to do with the interim maintenance awarded in the divorce proceedings. The said order was passed taking into account the entire background facts including the interim order in I.A.No.21 of 2005 in HMOP.No.20 of 2004, the decree passed in O.S.No.42 of 2006 and the

Execution Petition in E.P.No.58 of 2010. In view of the reasons given by the learned Trial Judge, I do not find any ground to interfere with the said order.

7. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

8. After the dismissal of the civil revision petition, the learned counsel for the petitioner submitted that the petitioner would pay the entire arrears as determined by the learned Principal Subordinate Judge, Tiruvannamalai, within a period of 30 days from today. In case, the arrears is paid and the petitioner continues to pay the interim maintenance, the learned Trial Judge is directed to dispose of the divorce petition as expeditiously as possible.

08.09.2016

Index:Yes/No
svki

K.K.SASIDHARAN,J.

(svki)

To

The Principal Subordinate Judge, Tiruvannamalai

C.R.P.(P.D.) No.2696 of 2016

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