

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-11-2016

CORAM

THE HONOURABLE THIRU JUSTICE **M. DURAISWAMY**

C.R.P.(NPD)No.985 of 2016
and CMP No.5574 of 2016

M. Prakash

... Petitioner

vs

Padmavathi @ Gogula Lakshmi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 12.02.2016 passed in REP No.11 of 2015 in I.A.No.222 of 2011 in FCOP No.437 of 2009 on the file of Family Court, Salem.

For Petitioner : Mr.R. Ezhilarasan

For respondent: Mr.G.S.Vivekanandan

ORDER

Challenging the order passed in REP No.11 of 2015 in I.A.No.222 of 2011 in FCOP No.43 of 2009 on the file of Family Court, Salem, the petitioner, who is the husband of the respondent, has filed the above

Civil Revision Petition.

2. The petitioner filed Family Court Original Petition in F.C.O.P No.437 of 2009 for divorce on the ground of desertion. In the petition, the respondent/wife filed an application in I.A No.222 of 2011 under Sec.24 of The Hindu Marriage Act, seeking for interim maintenance of Rs.36,900/-per month and also a sum of Rs.5,400/- towards educational expenses of the minor daughter.

3. The Family Court, taking into consideration the case of both parties, awarded a sum of Rs.15,000/- as monthly maintenance and a sum of Rs.10,000/- towards litigation expenses.

4. Pursuant to the order passed in I.A.No.222 of 2011, the respondent/wife filed an Execution Petition in R.E.P No.11 of 2015 to arrest the petitioner/husband since he had not paid a single pie towards interim maintenance.

5. When the matter was listed before the Family Court on 12.02.2016, since the petitioner was not present, he was called

absent and the Family Court ordered arrest without giving any finding with regard to the means of the petitioner.

6. Arrest of the judgment debtor can be made only if the judgment debtor neglects to pay the decree amount, inspite of having sufficient means. Therefore, the burden is on the respondent/decreed holder to prove that the petitioner/judgment debtor is having sufficient means and inspite of the same he is neglecting to pay the decree amount.

7. The Family Court, without giving any finding with regard to the means of the petitioner, ordered arrest. The respondent/wife should have entered box and proved that the petitioner has got sufficient means to pay the decree amount. Since all these exercises were not done, I am of the view that the order passed on 12.02.2016 in REP No.11 of 2015 is liable to be set aside. Accordingly, the same is set aside and the matter is remitted back to the Family Court, Salem for fresh consideration. The Family Court, Salem is directed to give

M. DURAISWAMY,J.,

sr

opportunity to the respondent/wife to let in evidence with regard to the means of the petitioner/husband and after considering oral and documentary evidence, to be let in by the parties, decide the matter afresh, specifically, giving a finding with regard to the means of the petitioner/husband. With these observations, the Civil Revision Petition is allowed. No costs. Consequently, connected CMP is closed.

10-11-2016

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Index:yes/no
website:yes

To

The Family Court, Salem

CRP(NPD)No.985 of 2016

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