

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.22213 of 2016
and
Cr1. MP.No.10316 of 2016

K.Bharathi

... Petitioner

Vs

1.K.Prabhavathy
2.B.Nimalan

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the Learned 1st Additional Family Court Judge, Chennai to number the petition dated 20.07.2016 filed by the petitioner through his Power Agent under Order 3 rule 2 of CPC in MC.No.213 of 2016 on the file of 1st Principal Family Court, Chennai and pass orders on merits accordance to law before passing Final order in MC.No.213 of 2016.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.J.Saravana Vel

ORDER

This criminal original petition has been filed to direct the 1st Additional Judge, Family Court, Chennai to number the petition dated 20.07.2016 filed by the petitioner through his Power Agent under Order 3 Rule 2 of CPC in MC.No.213 of 2016 on the file of the 1st Principal Family Court, Chennai and pass orders on merits and in accordance with law before passing final order in MC.No.213 of 2016.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. For the sake of the convenience, the parties will be referred to by their name.

4. Prabavathy got married to one Bharathi on 09.09.2013 and they have one children by name Nimalan through the wedlock. Their marital life ran into rough weather and they are estranged. Prabhavathy filed MC.No.213 of 2016 before the First Additional Family court, Chennai under Section 125

Cr.P.C. for maintenance against Bharathi. Admittedly, even in the said petition, the address of Bharathi is shown as address in Dubai. Since Bharathi did not appear before the Family Court, he was set ex parte on 20.07.2016 and the case was posted for ex- parte evidence on 20.08.2016.

5. It is the case of Bharathi that on 20.07.2016, his father M.S.Kalai Lingam, appeared before the Family Court and filed the power of attorney along with the petition under Order 3 Rule 2 CPC, which according to Bharathi, was taken on file by the Family Court, but was not numbered. However, admittedly Bharathi was set ex parte on 20.07.2016 and the matter was posted for ex parte evidence on 20.08.2016.

6. The case was adjourned to 07.09.2016 on which date Prabhavathy filed the proof affidavit and the 1st Additional Family Judge, Chennai passed final orders in MC.No.213 of 2016 directing Bharathi to pay a sum of Rs.5,000/- p.m to Prabhavathy and Rs.20,000/- p.m. to Nimalan (totally Rs.25,000/-). Thereafter, Bharathi filed the present petition on 23.09.2016 before this Court for the aforesaid relief.

7. When this petition came up for hearing on 04.10.2016, this Court passed the following order :

"Notice of motion returnable by 01.11.2016. Private notice is also permitted.

2. There shall be an order of interim stay on condition that the petitioner shall deposit a sum of Rs.10,000/- [Rupees ten thousand only] before 5th of every English calendar month to the credit of M.C.No.213 of 2016 on the file of the First Additional Family Court, Chennai, without prejudice to the case of the petitioner. On such deposit, the first respondent-wife is entitled to withdraw the same.

3. For the month of October 2016, the said sum of Rs.10,000/- shall be deposited on or before 26.10.2016.

Post on 01.11.2016 for reporting complainance."

8. Today, when the matter was taken up for hearing, learned counsel appearing for Prabhavathy, brought to the notice of this Court that MC.No.213 of 2016 was disposed of as early as 07.09.2016. This fact was not brought to the notice of this Court when the order dated 04.10.2016 was passed. However, pursuant to the order dated 04.10.2016, Bharathi has deposited a sum of Rs.10,000/- on 26.10.2016 before the Family Court vide receipt No.31081.

9. Technically speaking, this petition would become infructuous, since final order has already been passed by the Family Court on 07.09.2016. However, in the interest of justice, to secure some monthly payment to Prabhavathy and her child Nimalan, this Court is of the view that further direction is required. Further, to ensure that Bharathi gets a fair hearing in the Family Court, this Court directs the First Additional Family Judge to deal with the petition filed by Bharathi through his father (Power Agent) Kalai Lingam in the manner known to law.

10. Liberty is also given to Bharathi to file an application for setting aside the ex parte order dated 20.07.2016 by filing necessary application through his father and power agent Kalai Lingam within the period of limitation. If it is barred by limitation, he may also file the application with a condonation of delay application under Section 5 of the Limitation Act. Until final orders are passed by the First Additional Family Judge, Chennai, in the main petition, Bharathi shall deposit a sum of Rs.10,000/- p.m. as directed by this Court in the order dated 04.10.2016 and on such deposit, Prabhavathy will be entitled to withdraw the same. The sum of Rs.10,000/- fixed by this Court by order dated 04.10.2016 is only an interim order and it is open to the First Additional Family Court to fix the amount of maintenance in accordance with the facts and circumstances of the case.

With the above direction, this petition is ordered. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

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To

1.The First Additional Family Judge,
Family Court, Chennai.

2.The First Principal Family Court,
Chennai.

+1cc to Mr.J.Saravana Vel, Advocate, S.R.No.61764

+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.61679

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NR(CO)

CA(30/11/2016)

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