

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)No.638 of 2012
and
M.P.No.1 of 2012

K.N.Shanmugasundaram

.. Petitioner

Vs

R.Pushpalatha

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.11.2011 made in I.A.No.332 of 2011 in H.M.O.P.No.9 of 2011 on the file of the Principal Subordinate Judge of Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : No Appearance

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decretal order dated 21.11.2011 made in I.A.No.332 of 2011 in H.M.O.P.No.9 of 2011 on the file of the Principal Subordinate Judge of Erode.

2.The revision petitioner is the husband of the respondent herein who filed H.M.O.P.No.9 of 2011 against his wife for divorce on the ground of cruelty before the Principal Sub-Court, Erode. Pending disposal of the above divorce petition, the respondent herein filed an application in I.A.No.332 of 2011 for the monthly maintenance amount of Rs.15,000/- to her and her child, apart from Rs.10,000/- towards litigation expenses.

3.According to the respondent/wife, the marriage between the petitioner and respondent was solemnized on 29.10.2001, out of the said wedlock a female child was born to them. While so, the petitioner herein without giving any valid reason, alleging some false allegation against the respondent herein, filed divorce petition in H.M.O.P.No.9 of 2011. The revision petitioner failed to maintain the respondent and his daughter and he has not lent any financial support to the respondent.

In fact the respondent herein only is maintaining all the education and medical expenses of her daughter. The revision petitioner is getting monthly income of Rs.40,000/- by doing business. Apart from that he is also having cash amount of Rs.15,00,000/- with him and doing money lending business. Out of which the revision petitioner is getting Rs.15,000/- per month. Hence it is just an proper to direct the revision petitioner to pay sum of Rs.15,000/- per month towards maintenance to the respondent.

4.Contradicting the version of the respondent, the revision petitioner filed counter affidavit and contented that the respondent is not interested in living with the petitioner after the date of marriage itself. She demanded to construct a house in her name. Further, she has not accepted the petitioner's first wife's sons and she have not allowed them into the matrimonial house. The petitioner is leading his life with the aid of his first wife's son and he is not in a position to maintain him. In fact, the first wife's son has been extending financial assistance to the daughter of the respondent for her educational expenses.

5.The respondent herein is a B.Com, graduate and she is earning Rs.5,000/- per month by conducting Tuition. That apart she is getting sufficient income from the women self help group as she is a member.

The present maintenance application is filed only with a view to harass the revision petitioner.

6. Before the trial Court on the side of the respondent two documents were marked as Exs.R1 and R2 and there is no oral evidence on either side. On a careful consideration of the case on either side, the trial Court by order dated 21.11.2011 ordered a sum of Rs.5000/- per month to be paid by the revision petitioner to his wife, the respondent herein. Challenging the same, the present Civil Revision Petition is filed by the husband.

7. I heard Mr.M.Guruprasad, learned counsel appearing for the petitioner and no representation on behalf of the respondent and perused the entire material available on records.

8. It is an admitted case on both sides that the revision petitioner is the husband of the respondent herein and their marriage was solemnized on 29.10.2001. Out of their wedlock a female child was born to them. Thereafter, due to misunderstanding between the petitioner and respondent, H.M.O.P.No.9 of 2011 is filed for divorce at the instance of the husband, the petitioner herein.

9. Pending disposal of the above divorce petition, the wife filed

I.A.No.332 of 2011 seeking for monthly maintenance of Rs.15,000/- to her and her daughter, apart from litigation expenses of Rs.10,000/-. In a case of maintenance, this Court as well as the Hon'ble Supreme Court has categorically held that the husband is bound to maintain the wife and children. Further, a divorced wife is also entitled for maintenance amount from her husband, unless she got second marriage.

10.In the present case, the marriage and the begotten of child are admitted by the petitioner herein. Therefore, the petitioner is duty bound to pay maintenance amount to his wife, the respondent herein and children and he cannot escape from paying maintenance amount to them, even if he is not having sufficient means to pay the maintenance.

11.In the present case on hand though the respondent/wife claimed Rs.15,000/- towards monthly maintenance amount, the trial after considering the facts and circumstances of the case, has awarded a reasonable sum of Rs.5,000/- towards monthly maintenance amount to the respondent and the same does not called for any interference by this Court. Further, at present the cost of living is very high and therefore, it is very difficult for the respondent and her daughter to lead a decent family life with a amount of Rs.5,000/-. The revision

petitioner ought not to have filed this civil revision petition by questioning the above said meager amount of Rs.5,000/-.

12.For foregoing discussion, I am of the considered view that the order of the trial Court is not liable to be interfered with and the Civil Revision Petition is liable to be dismissed.

13.In the result, the Civil Revision Petition is dismissed and the order and decree made in I.A.No.332 of 2011 in H.M.O.P.No.9 of 2011 dated 21.11.2011, is hereby confirmed. No cost. Consequently, connected miscellaneous petition is closed.

04.07.2016

Note:Issue order copy on 13.09.2017.

vs

Index: Yes/No

Internet: Yes/No

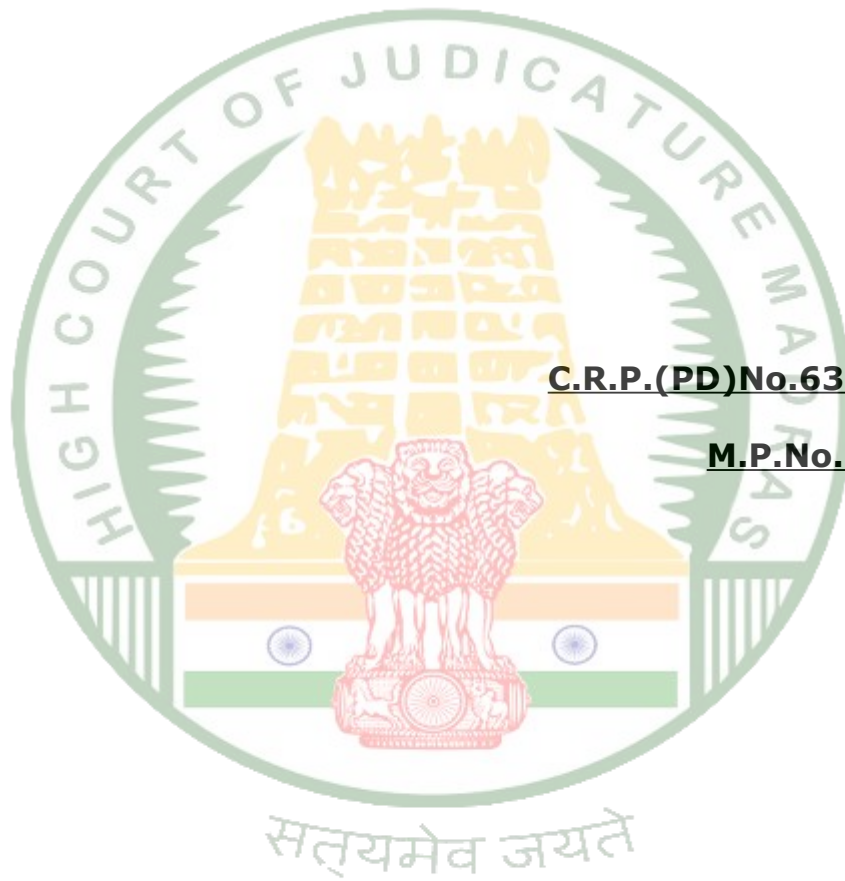
To

The Principal Subordinate Judge, Erode.

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M.V.MURALIDARAN.J.,

VS



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