



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.03.2016

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
C.R.P. (MD) .Nos.114 and 404 of 2016 (PD)

and

C.M.P. (MD) .No.487 of 2016

in

C.R.P. (MD) .No.114 of 2016

C.R.P.PD(MD) .No.114 of 2016

Anand Abeson Daniel

... Petitioner/Respondent/Petitioner

Vs.

Saheena Parimala

... Respondent/Petitioner/Respondent

C.R.P.PD(MD) .No.404 of 2016

Saheena Parimala

... Petitioner/Petitioner/Respondent

Vs.

Anand Abeson Daniel

... Respondent/Petitioner/Respondent

Common Prayer in CRP Nos.114 and 404 of 2016:

Civil Revision Petitions filed under Article 227 of the Constitution of India, against the order dated 22.12.2015 passed in I.A.No.155 of 2012 in D.O.P.No.151 of 2012, by the District Judge, Kanyakumari Division at Nagercoil.

For Petitioner in
C.R.P.No.114/2016

:Mr.G.Prabhurajadurai

For Respondent in
C.R.P.No.114/2016
For Petitioner in
C.R.P.No.404/2016

:Mr.M.P.Senthil

:Mr.M.P.Senthil

For Respondent in
C.R.P.No.404/2016

:Mr.G.Prabhurajadurai

COMMON ORDER

Both the Civil Revision Petitions arising out of the common order, dated 22.12.2015 passed in I.A.No.155 of 2012 in D.O.P.No.151 of 2012, by the District Judge, Kanyakumari Division at Nagercoil.

2.The petitioner in C.R.P.No.404 of 2016 is wife. The petitioner in C.R.P.No.114 of 2016 is husband. The parties are referred to as husband and wife in this common order.

3.The husband filed D.O.P.No.151 of 2012 for divorce before the District Court, Kanyakumari Division, Nagercoil. The wife filed I.A.No.155 of 2012 seeking for a direction to the respondent to pay Rs.30,000/- per month as alimony pendente lite and Rs.30,000/- towards litigation expenses.



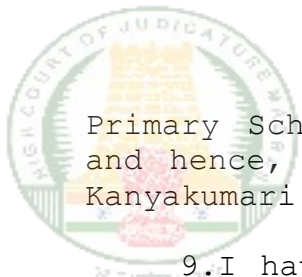
4. According to the wife, the husband is a wealthy person and he is earning Rs.5 lakhs per month. He is owning three houses at Nagercoil Town and immovable properties to the value of more than 5 crores at various places and also having flats in Chennai, Mumbai and at Dubai. The maintenance to the wife should be paid in consonance with the status of the husband and therefore, she prayed for Rs.30,000/- per month for her monthly maintenance and Rs.30,000/- as litigation expenses.

5. The husband filed a counter affidavit and oppose the same. The husband denied the fact that he is earning Rs.5 lakhs per month. He is doing commission business and earning only one lakh per month. The husband is maintaining two children with the help of his aged parents and he paid all the education expenses and other expenses for his minor children and he is maintaining his aged parents as well as himself. The husband stated that he is not liable to pay any maintenance, as his wife deserted him 8 years back without any reason and she is leading a wayward life. Therefore, she is not entitled to get any maintenance. The amount claimed by the wife is also excessive.

6. The learned Judge considered all the facts and materials on record, passed an order directing the husband to pay Rs.10,000/- per month as interim alimony to the petitioner from the date of filing of the IDOP petition till the disposal of the petition and Rs.30,000/- as litigation expenses. As against the above said order, the wife filed C.R.P.No.404 of 2016 for enhancement of maintenance and the husband filed C.R.P.No.114 of 2016 to set aside the fair and decretal order dated 22.12.2015 passed in I.A.No.155 of 2012 in D.O.P.No.151 of 2012, by the District Judge, Kanyakumari Division at Nagercoil.

7. The learned counsel for the husband contended that the learned Judge had failed to see that the husband is maintaining his two minor children as well as his aged parents. The wife has deserted the husband long back and she is leading a wayward life. After 8 years of deserting him, the wife has come out with I.D.O.P.No.84 of 2012 for restitution of conjugal rights and also filed G.W.O.P.No.82 of 2012 for custody of minor children. He further submitted that the learned Judge had erred in exercising his discretion in granting interim alimony, even though the wife has not proved that she is not able to maintain herself. He further submitted that the learned Judge failed to consider the conduct of the wife that she has claimed alimony only after 8 years after deserting the husband. The learned counsel further submitted that the learned Judge failed to see that with his meagre income as commission agent, he is maintaining his minor children as well as his aged parents and therefore, he prayed for setting aside the order passed by the learned Judge.

8. The learned counsel for the wife contended that the learned Judge failed to see that the husband himself admitted in his counter that his earning not less than Rs.1 lakh per month. He further submitted that the learned Judge ought to have granted alimony of Rs.30,000/- per month. The learned Judge erred in granting Rs.10,000/- per month for her maintenance, without considering the financial status of the husband. The maintenance to the wife should be paid in consonance with status of the husband. He further submitted that the learned Judge failed to see that the wife originally admitted the children in Infant Jesus Nursery &



Primary School, Trituapuram and the husband forcibly took the children and hence, wife filed G.W.O.P.No.82 of 2012 before the District Court, Kanyakumari District at Nagercoil, for the custody of the children.

9.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and carefully perused the entire materials on record.

10.The wife stated in the petition that her husband is earning Rs.5 lakhs per month and she has not produced any documents to substantiate her claim. On the other hand, the husband has stated that he is a commission agent and earning Rs.1 lakh per month and also he is maintaining his minor children as well as his aged parents. In the circumstances, the order of the learned Judge awarding Rs.10,000/-p.m. as interim alimony and Rs.30,000/- towards litigation expenses is just and reasonable, taking into consideration the fact that the husband alone maintaining their children as well as his aged parents. The contention of the learned counsel for the husband that the wife is not entitled to get interim alimony, as she has deserted her husband without any valid reason and she has not claimed any interim alimony for the past 8 years and therefore, the order of the learned Judge has to be set aside, is untenable. The learned Judge ordered interim alimony to the petitioner from the date of filing of the petition till the disposal of the petition in I.D.O.P.No.151 of 2012. Therefore, there is no reason warranting interference by this Court in the well-considered order of the learned trial Judge.

12.In the result, both the civil revision petitions are dismissed. No costs. Consequently, the connected miscellaneous petition is also closed. The husband is directed to pay interim alimony as ordered within six weeks from the date of receipt of a copy of this order. On such payment, the learned Judge is directed to dispose I.D.O.P.Nos.151 and 84 of 2012 and G.W.O.P.No.82 of 2012, as expeditiously as possible, in any event, not later than 31st August 2016. No costs.

Sd/-

Assistant Registrar (CO Dept)I/c

/True Copy/

Sub Assistant Registrar

To

The District Judge,
Kanyakumari Division at Nagercoil.

+ 1 CC TO M/S.G.PRABHU RAJADURAI, ADVOCATE IN SR NO. 14320

+ 1 CC TO M/S.M.P.SENTHIL, ADVOCATE IN SR NO.14331

NS

TE/SKS-RR/ : 05/04/2016 : 3P/4C

C.R.P. (MD).Nos.114 and 404 of 2016(PD)

and

C.M.P. (MD).No.487 of 2016

in

C.R.P. (MD).No.114 of 2016

14.03.2016