

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.R.C.No.1109 of 2017

and Crl.M.P.No.10470 of 2017

Rajesh Bajaj

... Petitioner

Vs.

1.Srichand K.Bajaj

2.Rohit Bajaj

... Respondents

Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records pertaining to M.P.No.209 of 2017 in M.C.No.148 of 2016 on the file of the learned II Additional Principal Judge, Family Court, Chennai.

For Petitioner : Ms.M.Dhivya

For Respondents : Mr.M.Jaikumar

JUDGMENT

This Revision has been filed against the order passed in M.P.No.302 of 2017 in M.P.No.209 of 2017 in M.C.No.148 of 2016 by the learned II Additional Principal Judge, Family Court, Chennai

2.The petitioner is the son and the 1st respondent is the father. Though originally a Maintenance Case was filed seeking maintenance from the petitioner by the 1st respondent/father, where both the petitioner as well as the 2nd respondent, who is another son of the 1st respondent have been arrayed as a party, subsequently, the 1st respondent had given up the claim against the 2nd respondent. Therefore, Maintenance Case was maintained only against the petitioner.

3.The said Maintenance Case was ordered by the trial Court without hearing the petitioner, who was the contesting respondent. Therefore, he filed a petition to condone the delay in filing the petition to set aside the *ex parte* order in M.P.No.209 of 2017. Unfortunately, the said Miscellaneous Petition was also dismissed for default and in order to restore the said M.P.No.209 of 2017, the petitioner had filed M.P.No.302 of 2017 before the trial Court to set aside the order of dismissal for default dated 23.05.2017 made in M.P.No.209 of 2017.

4.The trial Court, after hearing both sides, has allowed M.P.No.302 of 2017 through the impugned order, however, on condition that the petitioner shall pay at least half of the arrear

amount ordered in M.C.No.148 of 2016 to the 1st respondent on or before 17.08.2017, failing which, the petition for restoration shall stand dismissed. As against the said conditional order passed by the trial Court, the present Revision has been filed.

5.I have heard Ms.M.Dhivya, learned counsel appearing for the petitioner and also heard Mr.M.Jaikumar, who takes notice at the admission stage and made submissions on behalf of the 1st respondent. Since the 2nd respondent has already been given up in the main case itself, he is only formal party and therefore, he was not heard.

6.On perusal of the impugned order, it is found that as per the order passed in M.C.No.148 of 2016, the petitioner was directed to pay a sum of Rs.10,000/-per month to the 1st respondent towards maintenance. The arrear itself was amounting, according to the learned counsel appearing for the 1st respondent, to the extent of Rs.1,70,000/-. However, this figure is disputed by the learned counsel appearing for the petitioner. According to her, the arrear was only Rs.1,40,000/-.

7. Whatever it may be, since the trial Court has directed to pay 50% of the arrears of maintenance which even according to the learned counsel appearing for the petitioner, would come around Rs.70,000/-, that should be taken into account, as if the said amount to be paid by the petitioner to comply with the conditional order passed by the trial Court. Therefore, the dispute now raised in this Revision is only to pay Rs.70,000/- by the petitioner to the 1st respondent. In this regard, the learned counsel appearing for the petitioner would submit that the petitioner has got an arguable case before the trial Court in the Maintenance Case, once it is taken up for hearing. Therefore, the learned counsel would also submit that the 1st respondent, who is the father of the petitioner, is living lavish life, one of his sons is in United States and with the help of him, he is leading a comfortable life. That apart, the petitioner is ready and willing to do his duty, as a son, to the 1st respondent/father. The learned counsel appearing for the petitioner further submits that 50% of the arrears of maintenance ordered to be paid to the respondent, as a condition to allow the petitioner to restore the Maintenance Case, according to the learned counsel appearing for the petitioner, is on the higher side.

8.I have heard both sides. After having gone through the order and considering the submissions made by both sides, I am of the view that even if assuming that the figure given by the petitioner is taken into account, 50% of the amount would come around Rs.70,000/-, this was exactly directed to be paid as per the orders of the trial Court, which is impugned herein.

9.Considering the circumstances of the case, I am inclined to entertain this Revision Case, on condition that the petitioner shall pay at least a sum of Rs.50,000/- to the 1st respondent towards arrears of maintenance, in order to comply with the said conditions imposed by the trial Court, in the order impugned.

10.In the result, the impugned order is modified that the petitioner shall pay a sum of Rs.50,000/- to the 1st respondent within a period of two weeks, from today, and on making such payment, the trial Court shall restore the main case and take up the same for trial/hearing in accordance with law.

11.It is made clear that if the petitioner is not complying with the said modified order of making payment within a time stipulated,

the benefit of giving such modification itself, shall automatically be vacated and the petitioner shall have to face the consequences.

With these modifications, this Criminal Revision Case is disposed of. Consequently, connected Miscellaneous Petition is closed.

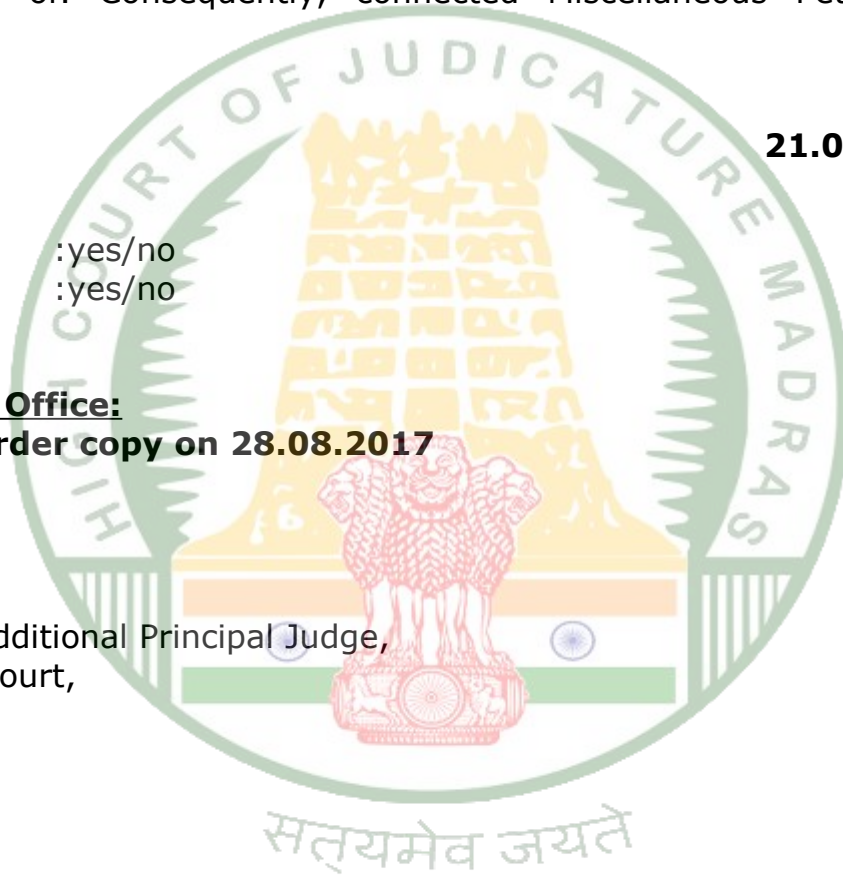
21.08.2017

Index :yes/no
Internet :yes/no
AT

Note to Office:
Issue order copy on 28.08.2017

To

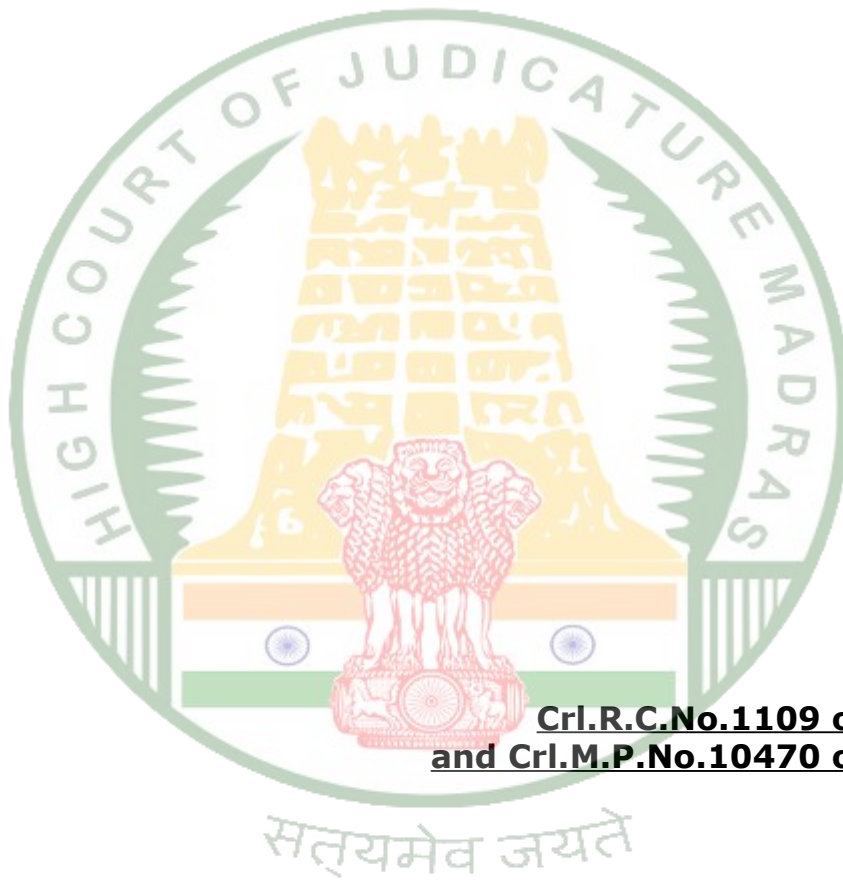
The II Additional Principal Judge,
Family Court,
Chennai.



WEB COPY

R. SURESH KUMAR, J.,

AT



Crl.R.C.No.1109 of 2017
and Crl.M.P.No.10470 of 2017

WEB COPY

21.08.2017