

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.Nos.81 and 82 of 2017

and

Crl.M.P.Nos.847 & 848 of 2017

Kosuru Rani

.. Petitioner in both Crl.RC.

vs.

M.Markandeylu

.. Respondent in both Crl.RC.

Criminal Revision cases filed under Sections 397 r/w 401 Cr.P.C. against the Order of learned III Additional Judge, Family Court, Chennai, passed in M.P.Nos.297 and 298 of 2016 in M.C.No.243 of 2005 on 05.12.2016.

For Petitioner : Mr.M.Manivasagam
for Manivasagam Assotiates

For Respondent : Mr.P.Subba Reddy

C O M M O N O R D E R

These revisions challenge the order of the III Additional Judge, Family Court, Chennai, passed in M.P.Nos.297 and 298 of 2016 in M.C.No.243 of 2005 on 15.12.2016.

2. Petitioner/wife has sought maintenance from the respondent/husband under section 125 of Cr.P.C. in a sum of Rs.4000/- per month and also made claim for litigation expenses. Respondent/husband has filed counter and he moved application in CMP.No.207 of 2015 wherein, he admitted his liability to pay the claim amount of Rs.4000/- per month and in keeping therewith paid a sum of Rs.3,00,000/- by way of cheque dated 08.02.2016 and the cheque has been received and encashed by petitioner/wife.

3. Petitioner has moved CMP.No.297 of 2016 and CMP.No.298 of 2016 seeking amendment of pleadings towards enhancing claim of maintenance in the main case to one of Rs.50,000/- per month and litigation expenses from 10,000/- to Rs.50,000/-, seeking payment of interim maintenance at Rs.50,000/- per month. Against dismissal of both petitions, petitioner has filed the present revisions.

4. Heard learned counsel for petitioner and learned counsel for respondent.

5. In passing the Orders under challenge, court below saw acceptance of a sum of Rs.3,00,000/- by petitioner and in keeping with petitioner's claim of Rs.4000/-, as estopped against her claiming maintenance for a larger sum. Court below also observed that petitioner has not informed any change of circumstance, and was not entitled to lay an excess claim for interim alimony, in a sum more than that sought in the main case.

6. We are unable to uphold the orders under challenge. Courts are required to be liberal in allowing amendments towards claim for payment of a larger sum in maintenance. Whether such a claim is justified or not, is a matter for trial. Even if upon respondent accepting the original claim made by petitioner, final orders had been passed in the main case, Section 127 Cr.P.C. still would allow petitioner/wife to inform change of circumstance and seek enhancement of maintenance. When the main case itself is pending, it would but be appropriate that the claim for higher sum in maintenance be permitted and decided upon on merits.

7. Learned counsel for petitioner submits that the claim of petitioner for maintenance in a sum of Rs.4000/- per month would hold good till the date of filing of petition for enhancement of maintenance, i.e., 08.02.2016. He fairly states that claim for a larger sum of maintenance is to be considered only from such date. When observation of court below that the petitioner/wife has not cross examined respondent/husband is brought to notice, learned counsel submits that petitioner would undertake such exercise without any further protraction of proceedings.

8. Learned counsel for respondent seeks a right to recall petitioner towards further cross examination and also undertakes to make available before court below the salary particulars of respondent/husband.

9. On consideration of the above, this Court orders as follows :

- (i) Orders under challenge shall stand set aside.
- (ii) Claim of maintenance in M.C.No.243 of 2005 shall be amended to one of Rs.50,000/- per month and the claim for litigation expenses shall also be amended to one of Rs.50,000/-.
- (iii) Within two weeks from date of amendment, learned counsel for respondent will furnish his salary particulars.
- (iv) Respondent is entitled to seek recall of petitioner for further cross examination.

(v) Court below shall take every endeavour to dispose of the main case as expeditiously as possible, in any event not later than 4 months from the date of receipt of a copy of this order.

(vi) Court below shall calculate maintenance between the date of filing of Maintenance case M.C.No.243 of 2005 - 07.02.2005 and date of filing of petition for enhancement of maintenance - 08.02.2016, at Rs.4000/- per month. After giving due deduction for a sum of Rs.3,00,000/- already paid by respondent, the balance sum shall be paid within a period of four weeks. In short, court below is required to determine maintenance payable from 08.02.2016.

Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The III Additional Judge,
Family Court,
Chennai.

+2 cc's to M/s.M.Manivasagam,advocate,sr.13649, 13650

+2 cc's to Mr.P.Subba Reddy,advocate,sr.14232, 14233.

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