

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3937 of 2015
& M.P.No.1 of 2015

R.Jothilakshmi

.. Petitioner

Vs.

P.N.Palanivel

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.06.2015 made in I.A.No.20 of 2015 in H.M.O.P.No.3 of 2015 on the file of the Subordinate Court, Sankagiri, Salem District.

For Petitioner : Mr.I.C.Vasudevan

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ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 19.06.2015 made in I.A.No.20 of 2015 in H.M.O.P.No.3

of 2015 on the file of the Subordinate Court, Sankagiri, Salem District.

2. The petitioner is wife and respondent is the husband. The respondent filed H.M.O.P.No.3 of 2015 on the file of the Subordinate Court, Sankari, for divorce, on the ground of cruelty. The petitioner filed I.A.No.20 of 2015 claiming a sum of Rs.10,000/- each per month towards interim maintenance for herself and her minor daughter and Rs.25,000/- towards litigation expenses.

3. According to the petitioner, she has no independent income. The respondent is working in a private college and he owns valuable agricultural lands and getting more than Rs.6,00,000/- as income per annum. The maintenance ordered by the Court was not paid by the respondent till date. The petitioner and her minor daughter are suffering without any income.

4. The respondent filed counter affidavit and denied the averments made in the said application. According to the respondent, he is working in a college as a daily wager and thereby, earning a sum of Rs.300/- per day. He has to maintain his aged

parents. The petitioner's father is owning lands and petitioner and her two sisters are his only children. The petitioner has sufficient means to maintain herself. The respondent further stated that Rs.10,000/- each claimed by the petitioner for her maintenance and her daughter and a sum of Rs.25,000/- towards litigation expenses are excessive. The respondent is willing to pay Rs.3,000/- per month to the petitioner as interim maintenance and Rs.4,000/- towards litigation expenses.

5. The learned Judge considering the materials available on record, dismissed the application.

6. Against the said order of dismissal dated 19.06.2015 made in I.A.No.20 of 2015, the present Civil Revision Petition is filed by the petitioner/wife.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. From the materials available on record, it is seen that both the petitioner and respondent have not substantiated their claim

with regard to the income of other party. The respondent in the counter affidavit, expressed his wiliness to pay Rs.3,000/- per month to the petitioner towards interim maintenance and Rs.4,000/- towards litigation expenses. The learned Judge without considering these aspects, dismissed the application on the ground that the petitioner has suppressed the fact that interim maintenance has already been ordered. The reasoning of the learned Judge is that the present application for interim maintenance is not maintainable in view of the earlier order granting interim maintenance. The learned Judge ought to have considered quantum of interim maintenance already granted and whether the same is sufficient or not or further amount has to be ordered and also willingness of the respondent that he is ready to pay a sum of Rs.3,000/- per month to the petitioner towards interim maintenance and Rs.4,000/- towards litigation expenses. In view of the failure on the part of the learned Judge to consider the above aspect, order of the learned Judge is liable to be set aside and it is hereby set aside.

9. In the result, the Civil Revision Petition is partly allowed. The respondent is directed to pay the admitted amount in his counter affidavit i.e., Rs.3,000/- per month as interim maintenance

to the petitioner from the date of petition and Rs.4,000/- towards litigation expenses. No costs. Consequently, connected Miscellaneous Petition is closed.

11.12.2017

Index : Yes/No
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To

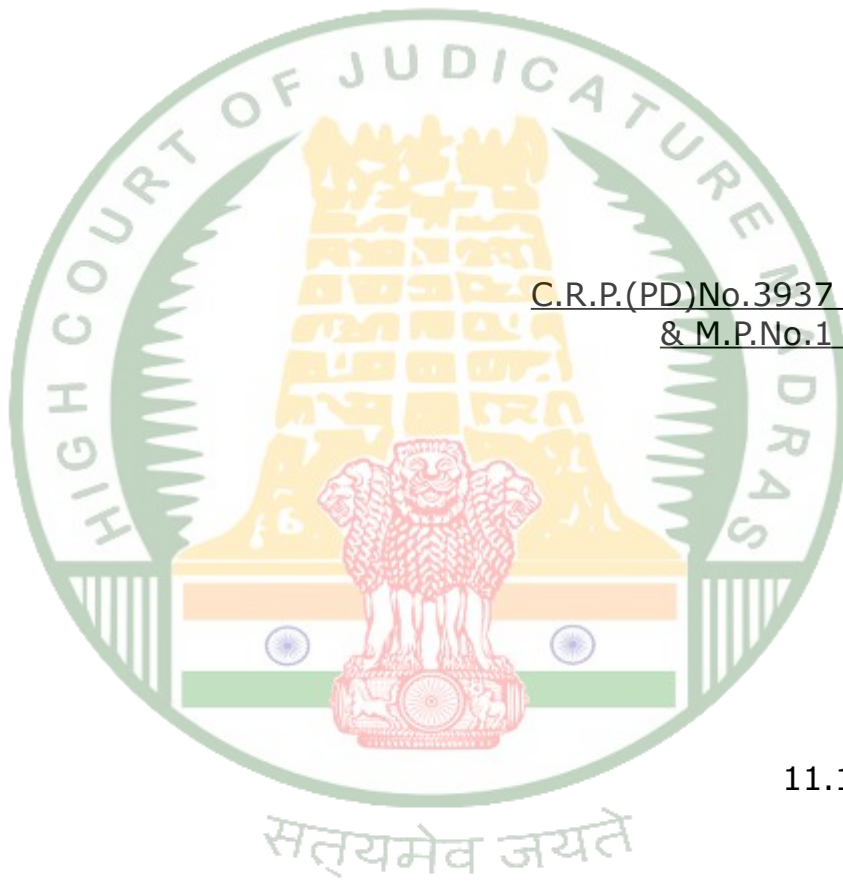
The Subordinate Judge, Sankagiri
Salem District.



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V.M.VELUMANI, J.

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