

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

**C.R.P.(PD) No.4340 of 2015
and M.P.No.1 of 2015**

G.Krishna Kumar

..Petitioner

-VS-

K.Suganya Dorairaj

..Respondent

Petition filed under Article 227 of the Constitution of India, praying against the order and decretal order dated 30.03.2015 passed in I.A.No.2559 of 2013 in O.S.No.600 of 2007 on the file of III Addl. Family Court, Chennai.

For Petitioner : Mr.V.M.G.Ramakkannan

For Respondent : Mrs.K.Sumathi

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ORDER

The petitioner, who is the husband of the respondent, has filed the above Civil Revision Petition challenging the fair and decretal order passed in I.A.No.2559 of 2013 in O.P.No.600 of 2007 on the file of III Additional Judge, Family Court, Chennai.

2.The respondent / wife filed the original petition in O.P.No.600 of 2007 for divorce on the ground of cruelty. The petitioner / husband filed his counter and was contesting the original petition. In the year 2010, the respondent filed an application in I.A.No.1948 of 2010 under Section 24 of the Hindu Marriage Act, seeking a sum of Rs.15,225/- per child as interim maintenance and a sum of Rs.1,00,000/- towards litigation expenses. The petitioner / husband filed his counter on 10.01.2011 accepting to pay a sum of Rs.20,000/- towards interim maintenance and Rs.20,000/- towards litigation expenses. Subsequently, by order dated 26.02.2013, the Family Court accepted the averments stated in the counter filed by the petitioner / husband and awarded a sum of Rs.20,000/- per month towards interim maintenance from 23.08.2010 and a sum of Rs.25,000/- towards litigation expenses. Aggrieved over the same, the petitioner preferred an appeal in C.M.A.No.3177 of 2013 before this Court. The appeal was dismissed by this Court on 11.02.2014.

3.The respondent / wife filed a petition in I.A.No.2599 of 2013 to strike off the defence in O.P.No.600 of 2007 on the ground that the petitioner had not complied with the order passed by the Family Court by paying the interim maintenance and the litigation expenses. The

application filed by the respondent / wife was opposed by the petitioner / husband. The Family Court, taking into consideration the case of both the parties, allowed the application and struck off the defence of the petitioner / husband.

4.It is pertinent to note that this Court, in the stay petition filed in C.M.A.No.3177 of 2013, granted an order of interim stay on condition the petitioner paying 50% of the arrears of maintenance within a period of eight (8) weeks and continue to pay the maintenance at the rate of Rs.10,000/- per month towards interim maintenance for the minor children by way of Demand Draft. The said order was passed on 25.09.2013. The learned counsel appearing for the petitioner submits that the petitioner offered to pay a sum of Rs.2,00,000/-, which was refused by the respondent / wife and therefore, the willful refusal to accept the maintenance amount by the respondent / wife cannot be put against the petitioner for striking off the defence.

5.Countering this submission, the learned counsel appearing for the respondent / wife submitted that though this Court had directed the petitioner / husband to pay 50% of the arrears, which comes to

Rs.3,80,000/-, but the petitioner had only offered to pay a total sum of Rs.2,00,000/-, which was rightly refused by the respondent / wife. It is also pertinent to note that the petitioner / husband filed a petition for extension of time in M.P.No.2 of 2013 in C.M.A.No.3177 of 2013. But, since the appeal itself was dismissed on 11.02.2014, the said petition was closed by this Court.

6.The learned counsel appearing for the respondent / wife submitted that as of today, the petitioner is liable to pay a sum of Rs.11,25,000/- as interim maintenance to the respondent. However, the learned counsel submitted that as of now, the petitioner has paid only a sum of Rs.5,00,000/- and that after making the payment of Rs.5,00,000/-, the petitioner has not made any payment to the respondent / wife. The learned counsel appearing for the petitioner submitted that the petitioner is not in a position to pay any money to the respondent / wife towards interim maintenance.

7.It is needless to state that the petitioner / husband is bound to maintain the respondent / wife and in spite of the award of maintenance by the Family Court, the petitioner has willfully neglected to pay the maintenance amount to the respondent / wife.

When he was directed to pay the monthly maintenance from 23.08.2010, even after a lapse of more than six (6) years, the petitioner has paid only a sum of Rs.5,00,000/- so far. It is settled position that in the case of failure to pay the monthly maintenance, the defence available to the husband in the original petition can be struck off. In the case on hand, the petitioner / husband has clearly neglected to pay the monthly maintenance in spite of the order passed by the Family Court as well as by this Court in the Civil Miscellaneous Appeal. Taking into consideration the non-compliance of the order of interim maintenance, the Family Court has rightly struck off the defence of the petitioner / husband.

8.For the reasons stated above, I do not find any error or irregularity in the order passed by the Family Court. The Civil Revision Petition is devoid of merits and is, accordingly, dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

22.03.2017

Speaking/Non-speaking order

Index : No
Internet : Yes

Note: Issue order copy by next week.

sra

M.Duraiswamy, J.

(sra)

To

1.The III Additional Judge,
Family Court, Chennai.

C.R.P.(PD) No.4340 of 2015

22.03.2017

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