

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1502 of 2009
& M.P.Nos.1,1 of 2009 and 2010

Diwakar Kunjithapatham

.. Petitioner

Vs.

1.Padmini
2.Ashurthosh Bharadwaj
Represented by his mother
and natural guardian R1

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 08.04.2009 made in M.P.No.909 of 2007 in M.C.No.419 of 2006 on the file of the I Additional Family Court, Chennai.

For Petitioner : Mr.G.R.M.Palaniappan

For R1 : Mrs.Uma Vijayakumar

ORDER

This Civil Revision Petition has been filed against the order dated 08.04.2009 made in M.P.No.909 of 2007 in M.C.No.419 of 2006 on the file of the I Additional Family Court, Chennai.

2. The petitioner is the husband, first respondent is the wife and second respondent is their minor son. The respondents filed M.C.No.419 of 2006 for maintenance. The petitioner did not file counter and contest the matter. He was set exparte on 16.07.2007 and exparte order was passed on 21.07.2007. The learned Judge directed the petitioner to pay a sum of Rs.15,000/- per month to the first respondent and Rs.10,000/- to the second respondent/minor son. The petitioner did not pay the said amounts. In the circumstance, the first respondent filed M.P.No.909 of 2007 for a direction to the petitioner to pay a sum of Rs.3,00,000/- towards arrears of maintenance as per the order dated 21.07.2007. The said application was ordered on 08.04.2009.

3. Against the order dated 08.04.2009 made in M.P.No.909 of 2007 in M.C.No.419 of 2006, the present civil revision petition is filed by the petitioner/husband.

4. According to the learned counsel for the petitioner, the petitioner filed a petition in M.P.No.865 of 2007 to set aside the exparte order of maintenance passed in M.C.No.419 of 2006. Without hearing and passing orders on merits in M.P.No.865 of 2007, the impugned order of the learned Judge ordering attachment of salary is invalid. Learned counsel for the petitioner submitted that at the time of admission, this Court granted interim stay on condition that the petitioner should deposit a sum of Rs.50,000/- and respondents were permitted to withdraw the amount. The petitioner deposited Rs.50,000/- and respondents withdrew the same. The learned counsel for petitioner submitted that the petitioner has left the services of ICICI Bank and he did not receive any instruction with regard to his present job.

5. According to the learned counsel for the respondents, the first respondent is unemployed and has no independent income to maintain herself and minor son. In the counter, first respondent has stated that the petitioner is working as a Manager in ICICI Bank and is earning handsome salary. Before the learned Judge in M.C.No.419 of 2006, the petitioner appeared and did not agree for settlement and after taking number of adjournments for filing counter, he did not file any counter. Therefore, he was set exparte

on 16.07.2007 and directed to pay the interim maintenance to the respondents. The petitioner filed application to set aside the exparte order of maintenance with condonation of delay. The delay has been condoned on 12.10.2007. The intention of the petitioner is not to pay any amount to the first respondent and her minor son and therefore, prayed for dismissal of the civil revision petition.

6. Heard the learned counsel for the petitioner and respondents and perused the materials on record.

7. Admittedly, first respondent is wife of the petitioner and second respondent is their minor son. The petitioner has not disputed the averments made by the first respondent that she is unemployed and is not having any independent income. Similarly, the petitioner has not denied the averments that he is working in ICICI Bank and is earning handsome salary. The learned counsel for the petitioner submitted that the petitioner has left the service of ICICI Bank, but he has not produced any document to substantiate this contention. He has also stated that he is not aware of the present employment of petitioner. In the absence of any material to show that petitioner is no longer in the service of ICICI Bank, the contention of the learned counsel for the petitioner cannot be

accepted. The petitioner is the husband of the first respondent and father of the second respondent/minor son and it is the duty of the petitioner to maintain them.

8. Taking into consideration of the above facts, the Civil Revision Petition is disposed of directing the petitioner to pay a sum of Rs.2,50,000/- (Rupees Two Lakhs fifty thousand only) to the respondents within a period of six weeks from the date of receipt of a copy of this order. On such payment, the order of the learned Judge attaching the salary of the petitioner shall stand set aside and M.P.No.865 of 2007 filed by the petitioner shall be heard and orders to be passed on merits and in accordance with law. If the petitioner fails to pay the amount, the Civil Revision Petition shall stand dismissed.

9. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.07.2017

Index : Yes/No

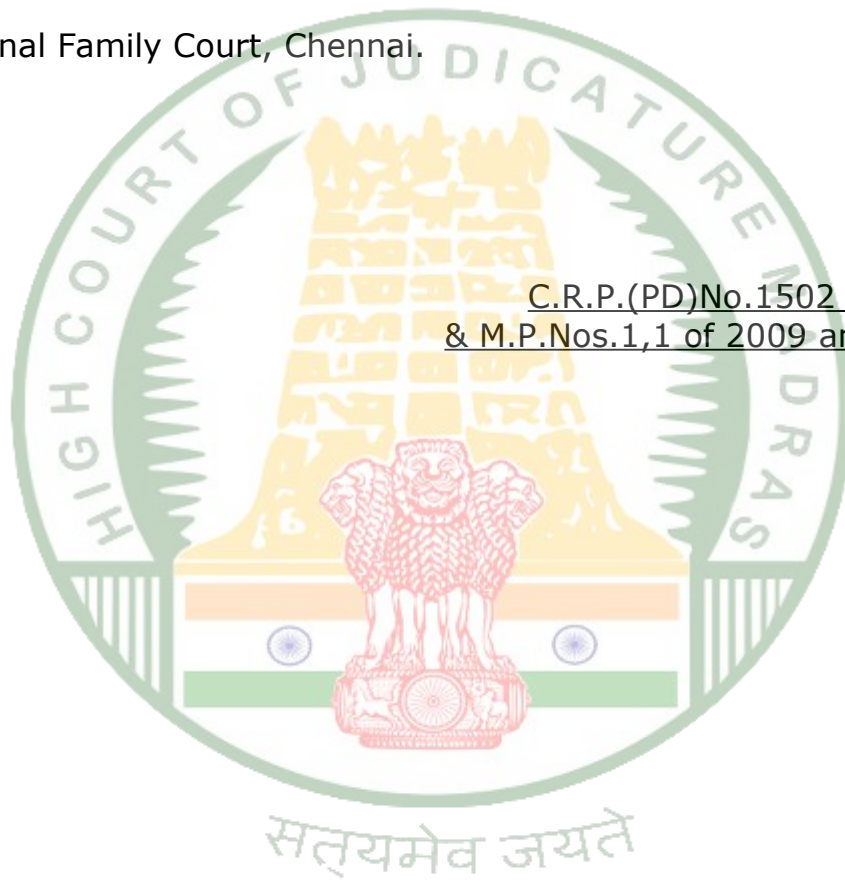
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V.M.VELUMANI, J.

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To

I Additional Family Court, Chennai.



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