

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.09.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Cr1.RC.No.1072 of 2016

F.Iruthiyaraj .. Appellant / Respondent
Vs.

1. I.Epsipa
2. I. Beula (Minor)
rep by 1st Respondent Mother .. Respondent / Petitioner

Petition filed under Section 397(1) r/w 401 of Cr.P.C against the impugned order on 05.11.2015 in M.C.No.257 of 2012 under the common trial in O.P.No.2029 of 2011 on the file of the Hon'ble Principal Judge of Family Court of Chennai.

For Petitioner : Mrs.R.Vinupriyanga
For Respondent : Mr.Charles Muthu Shanthan

ORDER

This criminal revision case has been filed against the order dated 05.11.2015 passed by the Principal Judge, Family Court, Chennai in M.C.No.257 of 2012.

2. The petitioner / husband had filed O.P.No.2029 of 2011 seeking for divorce against the first respondent and the first respondent had filed O.P.No.1358 of 2013 seeking restitution of conjugal rights against the petitioner. Also the first respondent / wife and the second respondent / minor child filed M.C.No.257 of 2012 against the petitioner / husband for maintenance. All these three cases had been heard together and a common Judgment had been passed by the trial Court on 05.11.2015 where the O.P.No.2029 of 2011 was dismissed and O.P.No.1358 of 2013 was allowed. Whereas M.C.No.257 of 2012 also had been ordered by which the trial Court directed the petitioner / husband to pay a sum of Rs.5000/- to the first respondent/wife and a sum of Rs.5000/- to the second respondent / child from the date of order i.e., 05.11.2015 as monthly maintenance. As against the said order passed in M.C.No.257 of 2012 arising out of the said common Judgment dated 05.11.2015, this present revision has been filed.

3. The case of the petitioner is that the petitioner has been working only as a OA under a Fish trader / company, out of which, he is getting salary of only Rs.6000/- per month.

4. Since difference of opinion arose between the petitioner and the first respondent / wife, the first respondent has voluntarily separated herself from the petitioner, with the result, the petitioner had filed the aforesaid OP for divorce. At the same time, the first respondent / wife also had filed the above said OP for restitution of conjugal rights. Also, the first respondent / wife as well as the second respondent / child has filed the aforesaid MC for maintenance.

5. The learned Judge vide common order, which is impugned herein, while allowing the OP filed by the first respondent / wife for restitution of conjugal rights had dismissed the divorce petition filed by the petitioner. As against the said dismissal order on the OP filed by the petitioner, he claimed that, he had already approached this Court by filing a miscellaneous Appeal.

6. The further case of the petitioner is that insofar as MC.No.257 of 2012 is concerned, since it was claimed by the first respondent that the petitioner is earning a sum of Rs.13,000/- by way of monthly salary and based on which, the learned Judge had directed the petitioner to pay a sum of Rs.5,000/- to the first respondent and another Rs.5000/- to the second respondent as monthly maintenance. Such order is erroneous because the petitioner's salary itself is only Rs.6000/- per month. Out of which he cannot pay a sum of Rs.10,000/-. Therefore, assailing the said order, the present revision has been filed.

7. Mrs. R.Vinupriyanga, learned counsel for the petitioner by inviting the attention of this Court, to the salary certificate dated 05.7.2012, filed by the petitioner, as additional documents, would state that, according to the said salary certificate issued by his employer, he is getting only Rs.6000/- per month including PF. Therefore, out of the said income, it is very difficult for the petitioner to lead a life as he is living with his mother. Therefore, the learned counsel for the petitioner would state that the amount awarded by the trial Court in the maintenance case, referred to above, to the extent of totally Rs.10,000/- towards the maintenance for the respondents, is certainly on the higher side.

8. The learned counsel for the petitioner would also submit that in fact, the petitioner had been continuously paying the school fees for the second respondent / child from day one i.e., at the time of second respondent joined school in the kinder

garden classes. In this regard, the learned counsel would invite the attention of this Court on the copy of the bills issued by the school, where the second respondent is studying for several years. According to him, so far the petitioner had paid a sum of Rs. 73,500/- towards school fees and other consequent expenses for all these years.

9. The learned counsel would further submit that this payment of the school fee has not been directed by the trial Court in the impugned order. Nevertheless, the petitioner in order to show his bonafide towards his child, has paid entire school fees for every year and these gestures shown by the petitioner should show that inspite of his meagre salary, he had been complying with the said moral obligation on the part of the petitioner to look after the education of his child.

10. By showing these documents, the learned counsel appearing for the petitioner would further state that, after having paid the entire educational expenses to the second respondent, there can be absolutely, no justification on the part of the first respondent to claim such a huge amount of Rs.5000/- each for first and second respondents towards their maintenance that too without taking into account, the earning capacity of the petitioner. Therefore, the learned counsel for the petitioner would submit that insofar as the quantum fixed by the trial Court in the order impugned is concerned, certainly it is on the higher side. Hence, it requires interference from this Court.

11. Per contra, Mr.Charles Muthu Shanthan, learned counsel for the respondent would rely upon the divorce petition filed in O.P.No.2029 of 2011 by the petitioner, wherein, the learned counsel appearing for the respondent would invite the attention of this Court that, it is the own admission on the part of the petitioner that after marriage the petitioner had taken a house for lease for a sum of Rs.2,60,000/- at Chennai-3 to have the family of the petitioner and first respondent. The further averments made in the said petition, as pointed out by the learned counsel for the respondent is, that the petitioner had celebrated first birthday of second respondent on 23.4.2011 with a cost of Rs.1,20,000/-.

12. By quoting these averments in the affidavit filed by the petitioner himself, the learned counsel appearing for the respondent would state that a person, who his getting a sum of Rs.6000/- as salary per month could not have made out these huge expenses as admitted by the petitioner himself. Therefore, the learned counsel appearing for the respondent would state that, drawing inference from the said averment made by the petitioner himself in his own petition, it can be ascertained easily that the petitioner is having a decent salary every month. Therefore,

the learned counsel for the respondent would state that the present claim made by the petitioner that he is getting Rs.6000/- per month, cannot be an acceptable one and in the facts and circumstances itself, for which the petitioner is also a party, as he himself has averred in the petition as mentioned above, would disclose that the petitioner definitely is earning a lot and therefore, out of the said earning, the present amount directed by the trial Court by way of maintenance through the impugned order, is not definitely on the higher side. Therefore, the learned counsel for the respondent would state that the said impugned order herein need not be interfered with.

13. I have considered the rival submissions made by both sides and have perused the materials.

14. It is not in dispute that the first respondent is the wife and the second respondent is the child of the petitioner. The divorce petition filed by the petitioner admittedly, has been dismissed by the trial Court. Therefore, there can be no controversy on the fact that the petitioner as the legally wedded husband of the first respondent has to maintain the first respondent / wife as well as the second respondent/child.

15. Now, the only issue to be resolved here, as confronted by both sides, is the quantum of maintenance awarded by the lower Court. Insofar as the fixing of the said amount of Rs.5000/- each for the first and second respondent as maintenance by the trial Court, it has taken into account the salary claimed to be earned by the petitioner by way of the case projected only by the respondent before the trial Court.

16. The learned Judge, has recorded a finding that, though it was claimed by the respondent that the petitioner had been earning Rs.13,000/- per month and Rs.15,000/- as commission and another Rs.50,000/- by way of interest on the lending business, there can be no proof to those findings. Though the learned Judge has also recorded the findings that the petitioner did not agree or accept the said claim made by the respondent's side and in fact, the petitioner had only accepted his earning as sum of Rs.6000/- per month, the learned Judge has proceeded to award the said amount towards maintenance at Rs.5000/- + Rs.5000/- totally Rs.10,000/- per month.

17. On a perusal of the said Judgment which is impugned herein, this Court prima facie finds that there is no evidence to show that exactly what is the salary of the petitioner. Since the petitioner claimed that his salary is only Rs.6000/- and in support of his contention, he has produced the certificate of salary dated 05.07.2012 as per which the petitioner's salary has been shown by his employer as consolidated salary of Rs.6000/- per month. The trial Court has projected on the basis of the

averments made by the respondent before the trial Court and ultimately, concluded that the petitioner had been earning more and accordingly, the aforesaid amount had been directed to be paid as maintenance.

18. This Court has given its careful consideration to the said document whereby he claimed that he had been earning Rs.6000/- per month. In order to support the same, he produced the salary certificate issued by the respondent dated 05.07.2012. Assuming that his salary was Rs.6000/- per month in the year 2012, consequently, the same would have been enhanced by this time. Moreover, since the petitioner had been admittedly, working in the said company / employer for some years, it cannot be accepted that he is getting only a salary of Rs.6000/- per month. In this regard, this Court also feels that the salary of the petitioner though has been mentioned in the certificate claimed to have been given by his employer, as only Rs.6000/- per month, certainly, the said salary would be more. However, there is no definite proof to show that the petitioner's salary is Rs.13,000/- as has been decided in the impugned order herein. However, the averments made by the petitioner in the divorce petition filed before the Family Court, Chennai as has been relied upon by the learned counsel for the respondent, cannot be easily brushed aside. Had the petitioner been an employee with a meagre salary of Rs.6000/- per month, he would not have been in a position to spend this much of amount towards lease for his house and also for spending money to celebrate the birthday of the second respondent. Probably, these circumstances would have been swaying the minds of the learned Judge of the trial Court to take a decision that the petitioner's salary since could be more than what had been claimed by him, he would be in a position to pay the higher amount towards the maintenance and that is the reason why the learned Judge has directed the petitioner to pay Rs.10,000/- per month as maintenance towards the respondents.

19. It can also be taken note of that, there is no specific direction or order for the petitioner to pay school fees of the second respondent. However, the petitioner as a dutiful father towards the second respondent, voluntarily came forward to pay the school fees continuously for all these years and in that regard, the petitioner had paid Rs.73,500/- and this payment had not even been disputed by the learned counsel for the petitioner.

20. Therefore, considering all these aspects and taking into account the present facts and circumstances of the case, this Court is inclined to pass the following order:

(i) The impugned order passed by the trial Court made in M.C.No.257 of 2012 dated 05.11.2015, is modified to the effect that the petitioner shall pay a sum of Rs.4000/- towards the first respondent and Rs.3000/- towards the second respondent as

monthly maintenance.

(ii) Insofar as the arrears of maintenance is concerned, if it is calculated at the rate of Rs.7000/- per month from 05.11.2015, approximately, it will come to Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only). The said arrears of amount of Rs.1,50,000/- since has not been paid (even calculating at the rate of Rs.7000/- per month as modified by this Court), the said arrears amount i.e, Rs.1,50,000/- shall be paid by the petitioner to the respondent within a period of eight weeks from the date of receipt of a copy of this order. Since the petitioner has already volunteered to pay the school fees for the second respondent for all these years, he shall continue to pay the school fees of the second respondent in the coming years also.

21. With these modifications of the impugned order, this criminal revision case is disposed of. CrI.M.P. 9147 of 2016 is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

The Principal Judge,
Family Court, Chennai

+1 cC to Mrs.R.Vinupriyanga, Advocate sr 68135.

+1 cC to Mr.Charles Muthu Shanthan, advocate sr 68156.

CrI.RC.No.1072 of 2016

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SP(16/11/2017)