

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 28.08.2017****CORAM****THE HONOURABLE MR. JUSTICE R. SURESH KUMAR****Crl.R.C.No.477 of 2016**

Kaladevi

... Petitioner

Vs.

S.Giriraj

... Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. to set aside the Judgment in Crl.A.No.261 of 2014 dated 23.11.2015 on the file of the learned XVII Additional Judge, City Civil Court, Chennai, in M.C.No.4286 of 2012 on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.S.Thamizharasi

For Respondent : Mr.P.M.Bakthavatsalam

ORDER

The petitioner/wife filed petitions before the trial Court under Sections 18, 19 and 20 of the Protection of Women from Domestic Violence Act, 2005, against the respondent and others.

2.The respondent/husband as well as the father-in-law and the mother-in-law of the petitioner had been arrayed as parties. It is informed that the father-in-law died. Therefore, eventually the present Revision is only against the respondent/husband.

3.The trial Court, after considering the merits of the case, has issued certain directions by its order dated 23.09.2014, whereby the respondent/husband were restrained from indulging any domestic violence against the petitioner, the petitioner was permitted to reside at the matrimonial home along with the respondent and also a direction for maintenance for a sum of Rs.10,000/- per month payable by the respondent to the petitioner. In the second direction with regard to the residence, if the petitioner is not willing to reside in the dwelling house of the respondent and wants to reside outside, the respondent has to pay a sum of Rs.5,000/- towards rent.

4.Aggrieved over the said order, the respondent/husband had filed an Appeal before the First Appellate Court. The First

Appellate Court also after having considered the merits of the case as well as the Judgment of the trial Court, while confirming the other directions, has modified only the third direction with regard to the payment of maintenance. According to the First Appellate Court, the directions given by the trial Court in M.C.No.4286 of 2012 dated 23.09.2014, to the respondent/husband, to pay a sum of Rs.10,000/- per month as maintenance to the petitioner/wife, has been modified to the effect that the husband to pay only a sum of Rs.5,000/- per month to the wife as maintenance. With regard to the other directions, the First Appellate Court has not interfered with the orders of the trial Court.

5.As against the said modified order passed by the First Appellate Court, the petitioner/wife has preferred the present revision case.

6.I have heard the learned counsel appearing for the petitioner as well as the respondent.

7.The subject matter in the present revision is only to consider the justification on the part of the First Appellate Court in modifying the maintenance to the wife from Rs.10,000/- to Rs.5,000/- per month. In this regard, the learned counsel appearing for the Respondent would submit that the father-in-law i.e., the father of the respondent died. Meanwhile, the mother of the respondent has become sick. Therefore, he has to take care of his mother and also his son, who born to the First Wife of the respondent/husband. His gross salary is more than Rs.20,000/-, and his take home salary is less than Rs.15,000/- and with that amount, he has to run his family with his ailing mother and his son, who is a College going student. Therefore, the learned counsel appearing for the respondent would further submit that the petitioner is working in a private Company, admittedly earning a sum of Rs.6,000/- per month. The order of the First Appellate Court, directing the husband to pay a sum of Rs.5,000/- per month as maintenance to the petitioner/wife, is more than sufficient for her maintenance and therefore, the learned counsel appearing for the Respondent submits that

absolutely there is no requirement of interference of this Court in the Judgment, which is impugned herein.

8.Per contra, the learned counsel appearing for the petitioner would submit that the petitioner has to maintain herself, as she was not allowed to go inside the kitchen of the matrimonial home. This contention is answered in favour of the petitioner/wife by the trial Court and has been confirmed by the First Appellate Court. The petitioner is getting a sum of Rs.6,000/- as salary, which is not enough to maintain herself. Therefore, by the reduction of maintenance from Rs.10,000/- to Rs.5,000/- per month by the First Appellate Court in the judgment impugned, the petitioner cannot maintain herself. Moreover, the learned counsel further would submit that insofar as further directions given by the trial Court that if the petitioner is not ready and willing to reside in the matrimonial home, she would be given further Rs.5,000/- by the husband by way of monthly rent, even the said amount has not been given by the respondent/husband.

9.I have considered the said submissions made by the learned counsel appearing for the petitioner as well as the respondent.

10.Admittedly, out of her job, the petitioner is getting a salary of Rs.6,000/- per month. That apart, the modified amount of Rs.5,000/- by way of maintenance as directed by the First Appellate Court is being paid regularly by the husband to the petitioner, as asserted by the respondent. The said fact is not disputed by the learned counsel appearing for the petitioner. Therefore, altogether, the petitioner is getting Rs.11,000/- per month (Rs.6,000/- + Rs.5,000/-), still the learned counsel appearing for the petitioner insist for some more amount, which is required for the petitioner to maintain her.

11.After hearing both sides and considering the factual situation, I am of the view that though a sum of Rs.11,000/- (Rs.6,000/- + Rs.5,000/-) is enough to maintain the petitioner, she expressed her grievance on the maintenance amount reduced by the First Appellate Court through the impugned

order. In order to meet the ends of Justice, I feel that instead of Rs.5,000/-, the petitioner can be paid Rs.6,000/- per month by the respondent/husband. Therefore, if the petitioner gets Rs.6,000/- + Rs.6,000/- that would altogether comes to Rs.12,000/- per month, this Court feels that it is an enough sum to maintain herself.

12.Considering all these aspects, since the First Appellate Court has not tinkered with other directions issued by the trial Court, except the modification by reducing the maintenance amount of Rs.10,000/- to Rs.5,000/- per month, this Revision is ordered on the following terms.

(1)The order of the direction, directing the respondent/husband to pay a sum of Rs.5,000/- per month to the petitioner/wife is modified to the effect that the respondent shall pay a sum of Rs.6,000/- per month from the date of petition.

(2)Hence, the petitioner is entitled to get the monthly maintenance of Rs.6,000/-

from the respondent/husband.

(3) Insofar as the arrears of maintenance at the rate of Rs.6,000/-, out of which, Rs.5,000/- has already been paid from the date of petition i.e., November, 2012, the remaining amount of Rs.1,000/- per month from the date of petition comes to Rs.56,000/-. In respect of all these arrears, in the interest of Justice, this Court feels that 50% of the amount i.e., 23,000/- shall be paid by the respondent to the petitioner in four equal monthly installments.

सत्यमेव जयते

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With these directions, the order impugned is modified

and the Criminal Revision Case is ordered accordingly.

28.08.2017

Index :yes/no

Internet :yes/no

mps

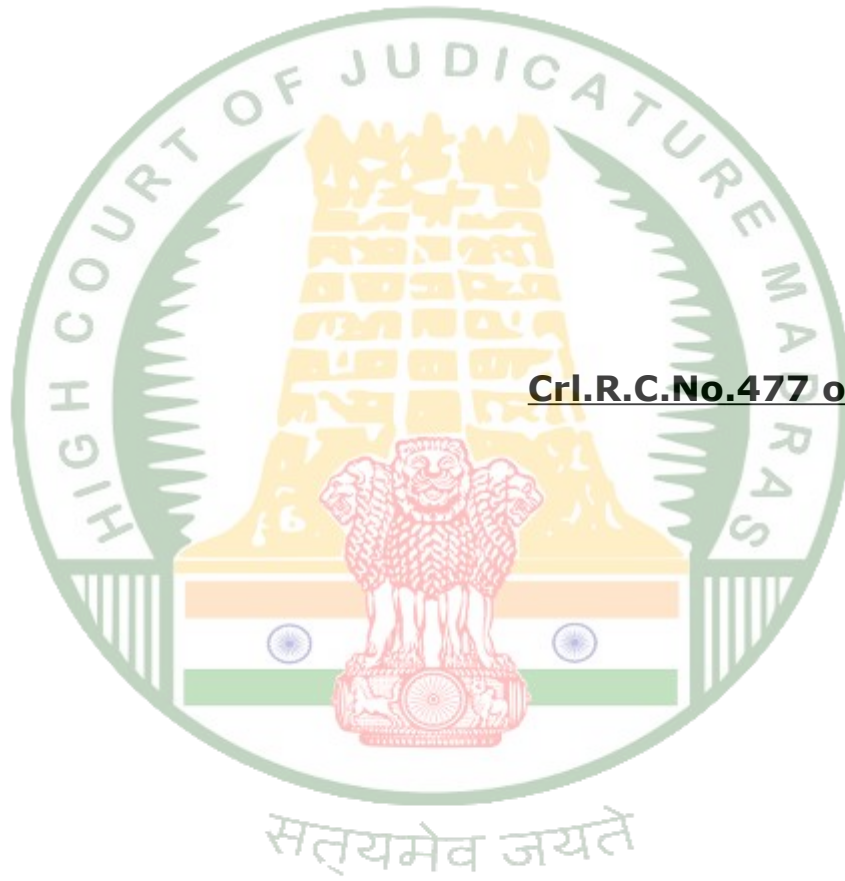
To

1.The XVII Additional Judge,
City Civil Court,
Chennai,

2.The XIII Metropolitan Magistrate,
Egmore,
Chennai.



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