

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

CRL.R.C.No.852 of 2016

1.Veda
2.Sahana

... Petitioners

- Vs -

G.Chandrashekar

... Respondent

Prayer: Revision is filed under Sections 397 and 401 of Cr.P.C. to enhance the amount awarded by the trial Court passed in M.C.No.28 of 2015, dated 21.03.2016 on the file of the learned Judicial Magistrate, Alandur and to that of 1,00,000/- to the 1st petitioner and 1,00,000/- to the 2nd petitioner from the quantum to grant such other equitable reliefs.

For Petitioners : Mr.K.P.Gopalakrishnan
for Mr.V.Manohar

For Respondent : Mr.S.Raja

ORDER

This revision case has been filed against the order passed by the learned Judicial Magistrate, Alandur in M.C.No.28 of 2015 dated 21.03.2016.

The very short facts which are required to be noticed for the purpose of disposal of this revision are as follows:

2.The 1st petitioner is the wife and the 2nd petitioner is the daughter of the respondent. They filed M.C.No.28 of 2015 before the trial Court, seeking maintenance from the respondent, at the rate of Rs.1,00,000/- to the 1st petitioner and Rs.1,00,000/- to the 2nd petitioner and also, Rs.1,00,000/- as litigation expenses.

3.Though notice had been served, the respondent did not appear before the trial Court. He has been set *ex parte* and an *ex parte* order was passed on 21.03.2016. By the impugned order, the trial Court has directed the respondent to pay a sum of Rs.12,000/- to the 1st petitioner and Rs.8,000/- to the 2nd

petitioner as monthly maintenance, from the date of petition. As against the said order, the present revision has been filed by the petitioners i.e., the wife and the child, for enhancement. The respondent/husband has not filed any revision against the said order, by thus, he has accepted the said order, though he was set *ex parte* before the trial Court.

4.I have heard Mr.K.P.Gopalakrishnan, learned counsel appearing for the petitioners. By relying upon certain documents before this Court, he would state that the respondent is running a Company at London and out of which, he is earning a lot and also, he is working in a Company for a handsome salary. Therefore, he is earning lakhs and lakhs of rupees per month. That apart, according to the learned counsel appearing for the petitioners, the respondent is having worthy immovable properties at Hyderabad and other places including a property at London and therefore, he is affordable to pay a higher maintenance to his wife and child. Therefore, the learned counsel would state that the order passed by the trial Court, directing the respondent to pay only a sum of Rs.12,000/- and Rs.8,000/-,

respectively, to the petitioners 1 and 2, as maintenance per month, is very meager amount, within which both the petitioners cannot lead a comfortable and respectable life, by taking a residence for rent at Chennai. Therefore, he would state that the said order awarding the maintenance of Rs.12,000/- plus Rs.8,000/-, totaling Rs.20,000/- by the trial Court, has to be modified and the said amount has to be enhanced.

5.Per contra, the learned counsel appearing for the respondent would state that as the respondent is residing and working at London, he could not appear before the trial Court. Taking advantage of the said situation that the respondent did not appear before the trial Court, the petitioner had claimed a higher maintenance by making an allegation that the respondent is earning lakhs and lakhs of rupees out of his job as well from his Company. In this regard, the learned counsel appearing for the respondent would state that the said Company as alleged by the petitioner in London was already closed. According to the learned counsel appearing for the respondent, in fact, the respondent has lost his permanent job at London and at present,

he is working, that too on temporary basis for which he is getting a salary of Rs.1,00,000/- per month. According to the learned counsel, the respondent has to give up the said job within a few months, as the Visa of the respondent is going to expire and at any rate, he has to return back to the home Country within a few months. Therefore, in this situation, the respondent has not appeared before the trial Court. Admittedly, the respondent did not appear before the trial Court. By taking into account the version of the petitioners, the trial Court has awarded the said sum towards maintenance to the petitioners.

6. Nevertheless, the respondent, having accepted the said order, has started paying the said amount, without fail. The learned counsel would also state that out of the arrears amount of Rs.4,60,000/- from the date of petition till date, as ordered by the trial Court, the respondent has already paid a sum of Rs.3,60,000/- approximately to the petitioners and only the remaining arrears of Rs.1,00,000/-, has to be paid. The learned counsel appearing for the respondent would also state that if the respondent is given a chance to prove his case before the trial

Court, he would be in a position to establish that he is not a millionaire and he is not earning lakhs and lakhs of rupees per month and based on the annual income of the respondent, some workable order can be passed by the trial Court.

7.I have considered the said rival submissions made by both sides.

8.It is not in dispute that the 1st petitioner is the wife of the respondent and the 2nd petitioner is the child, born to the 1st petitioner and the respondent. Though the marital relationship estranged, she has not been severed legally and admittedly, the divorce petition seems to have been filed by the respondent/husband was got dismissed.

9.Therefore, there can be no quarrel that the respondent has to pay maintenance to the petitioners. Because the respondent was absent before the trial Court, the trial Court has no other option, except to come to the conclusion that the said version has to be accepted and the respondent was directed to

pay a sum of Rs.20,000/- as maintenance to the petitioners. According to the trial Court Judge, the said claim of Rs.1,00,000/- to each of the petitioners was considered to be on the higher side.

10. Whether the respondent is actually earning such huge money every month or now getting very less salary, as claimed by the parties, cannot be gone into at this stage. These evidences or documents whatsoever have not been projected before the trial Court and there was no claim and counter claim by way of documents. In view of the said position, in order to give a quietus to the issues raised in this revision, as both the parties agreed upon to settle certain issues and only with regard to the quantum of maintenance payable by the respondent alone it is disputed, this Court is of the view that the matter can be remanded back to the trial Court with suitable direction for early disposal.

11. In the result, the following orders are passed in this revision:

(1) The impugned order is set aside.

(2) The matter is remitted back to the trial Court for rehearing / reconsideration.

(3) Both the petitioners as well as the respondent shall appear before the trial Court either in person or through pleader and they must produce whatever evidence available with them to the trial Court and co-operate with the trial Court to complete the trial by way of rehearing and to come to a just and reasonable conclusion regarding the claim and counter claim of both the parties pertaining to the income of the respondent and quantum of maintenance to be paid or payable by the respondent to the petitioners.

12. In such event, the learned Judicial Magistrate can go into the matter by way of rehearing/retrial on the basis of the available evidence to be adduced by both sides.

13.However, in the meanwhile, as an interim measure, the said direction given by the trial Court to the respondent to pay maintenance for a sum of Rs.12,000/- Plus Rs.8,000/- to the petitioners 1 and 2, respectively, is hereby modified that the respondent shall pay a sum of Rs.25,000/- to the 1st petitioner and Rs.15,000/- to the 2nd petitioner, as an interim maintenance per month, till the disposal of the Maintenance Case by the trial Court.

14.Insofar as the payment of arrears of maintenance is concerned, calculating at the rate of Rs.20,000/- as ordered by the trial Court, the arrears amount has come to Rs.4,60,000/-. Admittedly, the petitioners have received a sum of Rs.3,60,000/- from the respondent. Therefore, the remaining amount of Rs.1,00,000/- towards arrears of maintenance calculating at the rate of Rs.20,000/- per month as directed by the trial Court, shall be paid by the respondent within a period of four weeks from the date of receipt of a copy of this order. Insofar as the current maintenance as enhanced above, i.e., Rs.40,000/- per month to

the petitioners, shall be paid by the respondent every month on or before 10th of every succeeding English calendar month.

With these directions, this Criminal Revision Case is disposed of.

13.09.2017

Index :Yes/No

Internet :Yes/No

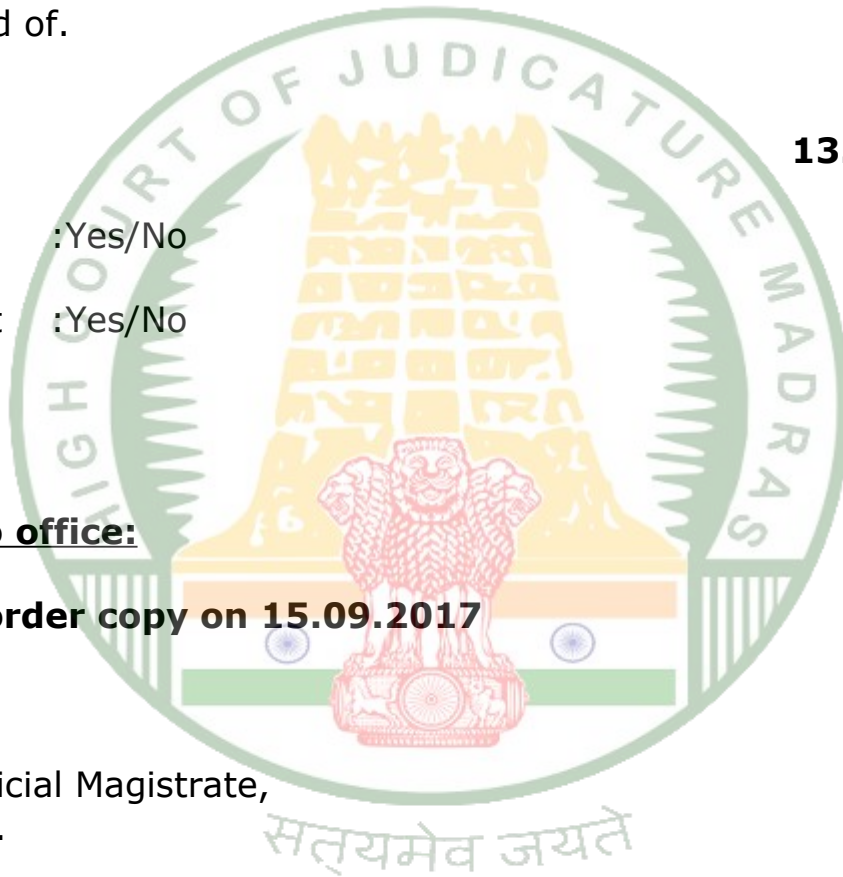
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Note to office:

Issue order copy on 15.09.2017

To

The Judicial Magistrate,
Alandur.



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R.SURESH KUMAR, J.,

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