

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2016

Dated : 26.10.2016

Coram

THE HONOURABLE **MR. JUSTICE G.CHOCKALINGAM**

**Crl.R.C.No.914 of 2016
and CMP.No.7142 of 2016**

V.Jeevanandham .. Petitioner

V.

Gomathi .. Respondent

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the judgment dated 25.04.2016 made in CA.No.106 of 2014 on the file of the IV Additional Sessions Judge, City Civil Court, Chennai modifying the order dated 05.04.2013 made in MC.No.83 of 2012 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.G.Karthikeyan

For respondent : Mr.P.Sesubalan

ORDER

This Criminal revision is directed against the Judgment made in Crl.A.No.106 of 2014 dated 25.04.2014 on the file of the IV Additional Sessions Judge, City Civil Court, Chennai modifying the order made in MC.No.83 of 2012 dated 05.04.2013 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

2.The brief facts which are relevant to the facts of the case are as follows :-

The marriage between the revision petitioner/husband and the respondent/wife was solemnized on 28.01.2002 @ A.N.Ramasamy Nadar Marriage Hall, Tondiarpet, Chennai and they lived together for sometime, the parties have two children out of their wedlock viz., Prekeshetha and Kawshik. The dispute arose between the parties and the respondent/wife started to live separately and filed maintenance case in MC.No.625 of 2007 before the I Additional Family Court, Chennai. The revision petitioner filed OP.No.21 of 2008 before this Court for custody of child. The compromise was entered into between the parties and withdrawn the cases filed by them respectively. Subsequently, the revision petitioner filed HMOP.No.1093 of 2013 for divorce and HMOP.No.1097 of 2013 for custody of the child, on the file of Family Court, Chennai, the same is pending as on date. In the meanwhile, the respondent/wife filed application under Sections 18, 19, 20 of Domestic Violence Act, before the IX Metropolitan Magistrate, Saidapet, Chennai in MC.No.83 of 2012, the trial Court after hearing the arguments of both sides, by an order dated 05.04.2013 directed the petitioner/husband to pay a sum of Rs.15,000/-p.m. each towards monthly maintenance to the wife and two children (totally Rs.45,000/-p.m.) Aggrieved against the order of trial Court, the revision petitioner/husband preferred an appeal before

the IV Additional Sessions Judge, City Civil Court, Chennai in Crl.A.No.106 of 2014, the first appellate Court after perusing the order of the trial Court, finally on 25.04.2016 directed the revision petitioner to pay a sum of Rs.10,000/-p.m. each to the wife and two children (totally Rs.30,000/-p.m.) under Section 20(d) of the D.V.Act and Rs.15,000/-p.m. towards rent under Section 19(f) of the D.V.Act. Aggrieved over the said judgment, the petitioner/husband is before this Court by way of present revision.

3.The learned counsel for the petitioner would mainly contend that the first appellate Court without application of mind erroneously fixing the income of the revision petitioner and directed the petitioner to pay a sum of Rs.10,000/-p.m. each to the wife and two children and Rs.15,000/-p.m. towards rent. The trial Court without considering the salary of the revision petitioner and without appreciating the bank statement etc., the trial Court holding that the petitioner is earning Rs.2,00,000/-p.m., there is no document produced on the side of the respondent to prove the income of the revision petitioner and hence the order of the Courts below in fixing the maintenance amount is very excessive one and the learned counsel prays to set aside the order of the Courts below and to allow the revision.

4.The learned counsel for the respondent would contend that the trial Court after considering the Bank statement of the revision petitioner that he is earning more than Rs.2,00,000/-p.m. The lower appellate Court after appreciating the bank statement and considering the economical status of the revision petitioner awarded Rs.10,000/- p.m. each to the wife and two children and Rs.15,000/-p.m. towards rent (totally Rs.45,000/-p.m.) and there is no illegality or infirmity in the order of the trial Court and the learned counsel prays for dismissal of the revision petition.

5.Heard the rival submissions made on both sides and perused the records.

6.Admittedly, the petitioner is working as a Marine Engineer from the year 2001 onwards as Electrical Officer, his salary will be credited in the Bank account directly (copy of the bank account statements are marked as Exs.P8 to P12 before the lower appellate Court). The judgment of the lower appellate Court in paragraphs 14 and 15 are extracted hereunder :-

"14.Further, the respondents as additional documents had filed Ex.P8 to Ex.P12 in this appeal. Ex.P8 is the Transaction statement of appellant in

M/s.Geogit BNB Paribas Financial limited for the period from 01.06.2010 to 30.06.2010 wherein the share transaction of appellant during the said period which shows the appellant had purchased shares to the total value of Rs.41,59,211.100/- Ex.P9 is the Transaction statement for the period from 01.03.2012 to 31.02.2012 which reveals that the appellant had purchased shares to the value of Rs.87,72,785.250/- Ex.P10 is the Extract of Bank Pass Book of respondent and it revealed by the Cheque No.512953 stated to have been given by the appellant when presented for collection on 07.02.2012 had not been honoured due to, "payment stopped by drawer". The appellant also did not deny the same fact. Ex.P11 is the HSBC Bank Account statement of appellant which shows that an amount of Rs.2,75,000/- and Rs.2,10,000/- had been credited from Anglo Eastern Shipping on 03.03.2010 and 07.04.2010 respectively through NEFT transaction and this is taken to be salary of the appellant and the appellant did not deny the contents of the document.

15.Further, Ex.P12 is the Summary of Accounts of the appellants account in ICICI. Wealth Management

which shows an amount of Rs.28,82,315.18 had been available in the appellants account. These documents would clearly show that the appellant had invested huge amount for purchasing shares of various companies, received amount of more than Rs.2Lakhs as remuneration and after giving cheque for Rs.11,000/- to the respondent had failed to clear the cheque by stopping payment for the cheque."

7.It is seen from the judgment of the first appellate Court that the respondent/wife has marked Exs.R1 and R2 showing the statement of account of the petitioner and shares purchased by the petitioner in Geojit BNP Paribas. In view of the above documents produced on the side of the respondent/wife, it is admitted that the petitioner is working as Electrical Officer in Marine and he is going for job on periodical basis and earning sufficient salary out of his contract and earning sufficient income and the petitioner is a wealthy man and receiving higher salary out of his employment.

8.In view of the above facts and circumstances, this Court considering the economical status of the revision petitioner and keeping in mind the quantum of maintenance granted by the first

appellate Court at the rate of Rs.10,000/-p.m. each to the respondent/wife and two children and Rs.15,000/-p.m. towards rent (totally Rs.45,000/-p.m.) is very much reasonable one and it cannot be deemed as excessive amount. This Court finds there no illegality or infirmity in the judgment passed by the first appellate Court in Crl.A.No.106 of 2014 and the same does not warrant any interference by this Court.

9.In the result, the criminal revision stands dismissed by confirming the judgment of the first appellate Court dated 25.04.2016 made in CA.No.106 of 2014 on the file of the IV Additional Sessions Judge, City Civil Court, Chennai. Consequently, connected miscellaneous petition is also closed.

26.10.2016.

Index:Yes/No
Internet:Yes/No
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To

The IV Additional Sessions Judge, City Civil Court, Chennai.
The IX Metropolitan Magistrate, Saidapet, Chennai.

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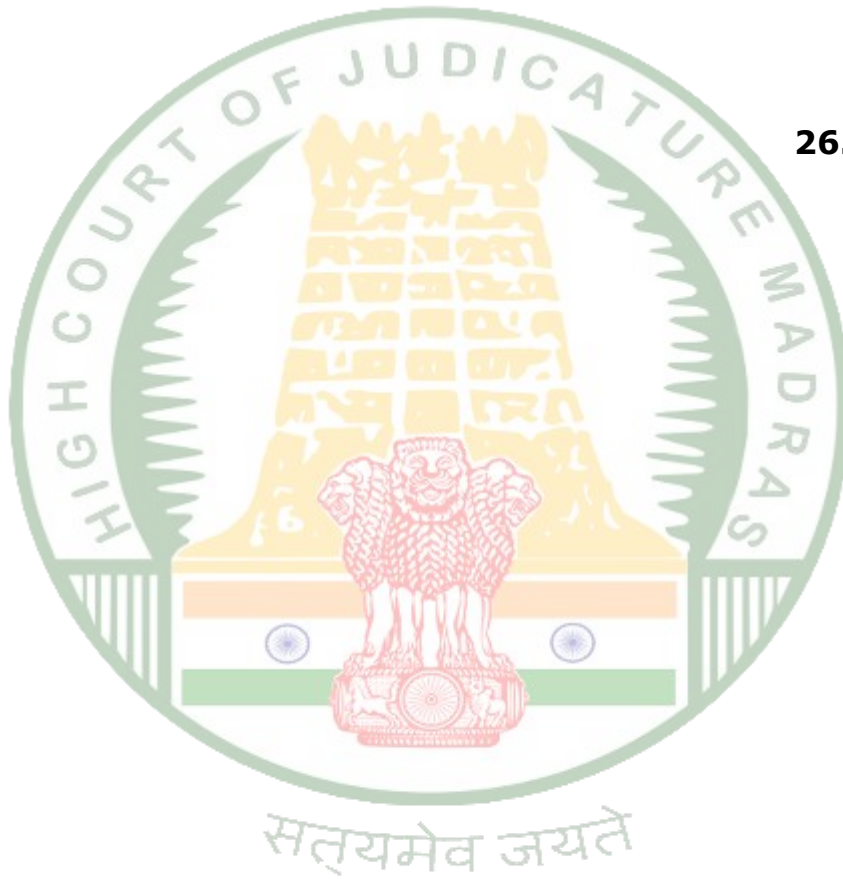


G. CHOCKALINGAM, J.
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Pre-Delivery Order in

Crl.R.C.Nos.914 of 2016



26.10.2016.

Crl.RC.No.914 of 2016
and
Crl.MP.No.7142 of 2016

R. SURESH KUMAR, J,

This Court by order dated 18.04.2017 had directed the learned IX Metropolitan Magistrate, Saidapet, Chennai, to dispose

of M.C.No.83 of 2012 within one month from the date of receipt of a copy of this order.

2. Thereafter, the learned Magistrate was not able to dispose of the Maintenance Case within the time given and has sought for a further time of two months and accordingly, by order dated 30.06.2017, further time of two months had been granted.

3. Though time was fixed to dispose of Maintenance Case and the same was also subsequently extended, once again, the learned Magistrate, by communication dated 04.09.2017, has sought for further time of three months to dispose of the said Maintenance Case. The main reason, according to the learned Magistrate, for the delay in disposal of Maintenance Case within the stipulated time, is the non co-operation of the parties, especially, on the side of the wife.

4. In this regard, I have heard Mr.G.Karthikeyan, learned counsel appearing for the petitioner/husband and Mr.P.Sesubalan, learned counsel appearing for the respondent/wife.

5.The learned counsel appearing for the respondent/wife would state that because of the pendency of M.P.No.1570 of 2016, which was in fact requested by the wife side to decide at the earliest and the same since has not been done by the learned Magistrate, on behalf of the wife, CrI.O.P.No.11038 of 2017, was filed before this Court and the same is pending. Probably, because of this pendency of Criminal Original Petition as referred to above before this Court, the said M.P.No.1570 of 2016, which was in fact clubbed along with the main Maintenance Case, is also pending and therefore, the further progress in the main Maintenance Case for completion of examination of witnesses is getting delayed, inspite of the Maintenance Case is almost heard in every alternative day.

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6.This Court, after considering the merits of the issue, has already given a direction to the trial Court to complete the main Maintenance Case itself and pass orders within the time frame,

which has been subsequently extended, on the request of the learned Magistrate for given reasons.

7. Even within the extended time, the learned Magistrate has not completed the said Maintenance Case, because of the prevailing reasons, as has been referred to above and the said reasons, in the opinion of this Court, cannot stand in the way in proceeding the Maintenance Case and decide the same on merits by completing the trial.

8. If at all, any request comes from the wife side to decide M.P.No.1570 of 2016, it is for the learned Magistrate to decide the Maintenance Case and other Miscellaneous Petitions, which is prior to the Maintenance Case or along with the Maintenance Case. However, the proceedings of the said M.P.No.1570 of 2016 shall not be delayed. It shall proceed with the main Maintenance Case, as there was already a time bound direction given by this Court, as referred to above.

9. In view of the above facts and circumstances of the case, the following orders are passed in this revision.

1)The learned Magistrate shall complete the trial in MC No.83 of 2012 and pass orders thereon within a period of 45 days from the date of receipt of a copy of this order.

2)In this regard, whether the learned Magistrate wants to dispose of M.P.No.1570 of 2016 filed by the wife or not, can be decided by him and it is made clear that the pendency of M.P.No.1570 of 2016 shall no way stand in proceeding with the main Maintenance Case and dispose of the same within a period of 45 days.

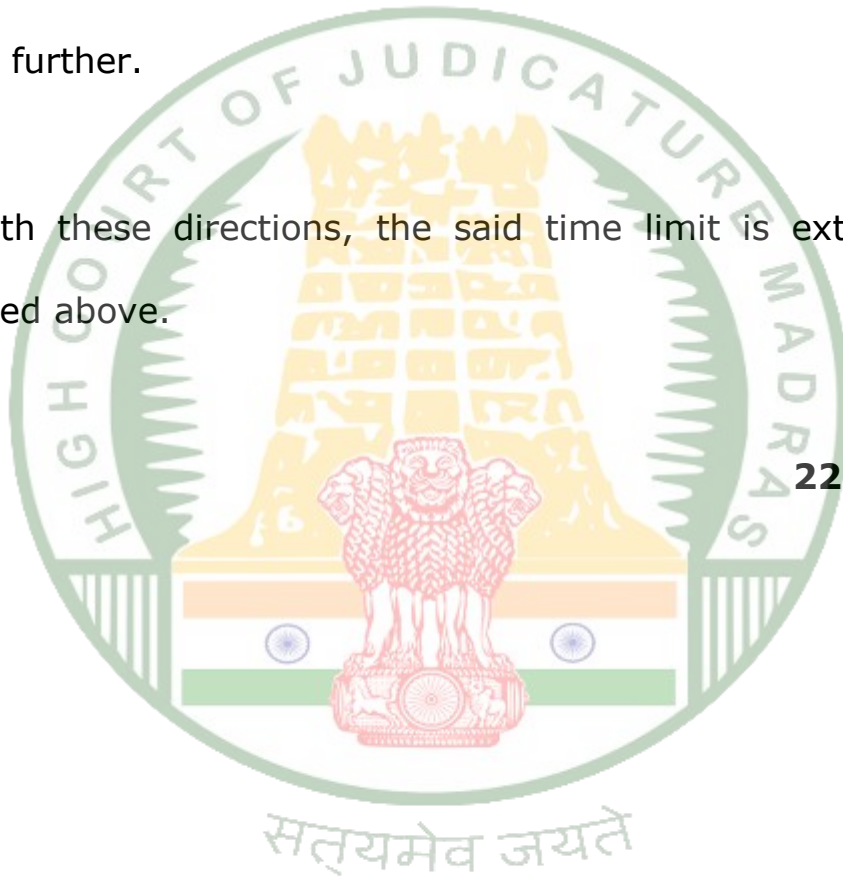
3)The parties are directed to co-operate with the learned Magistrate to complete the trial and pass orders in the main Maintenance Case within the time stipulated above. In this regard,

it is further clarified that unnecessary proceedings protracting the completion of the trial and disposal of the Maintenance Case, can be avoided by both sides and if any such

protracting proceeding is filed by both sides before the trial Court, they shall be dealt with by the learned Magistrate within the ultimatum due i.e., 45 days from the date of receipt of a copy of this order and the same will not be extended further.

With these directions, the said time limit is extended as prescribed above.

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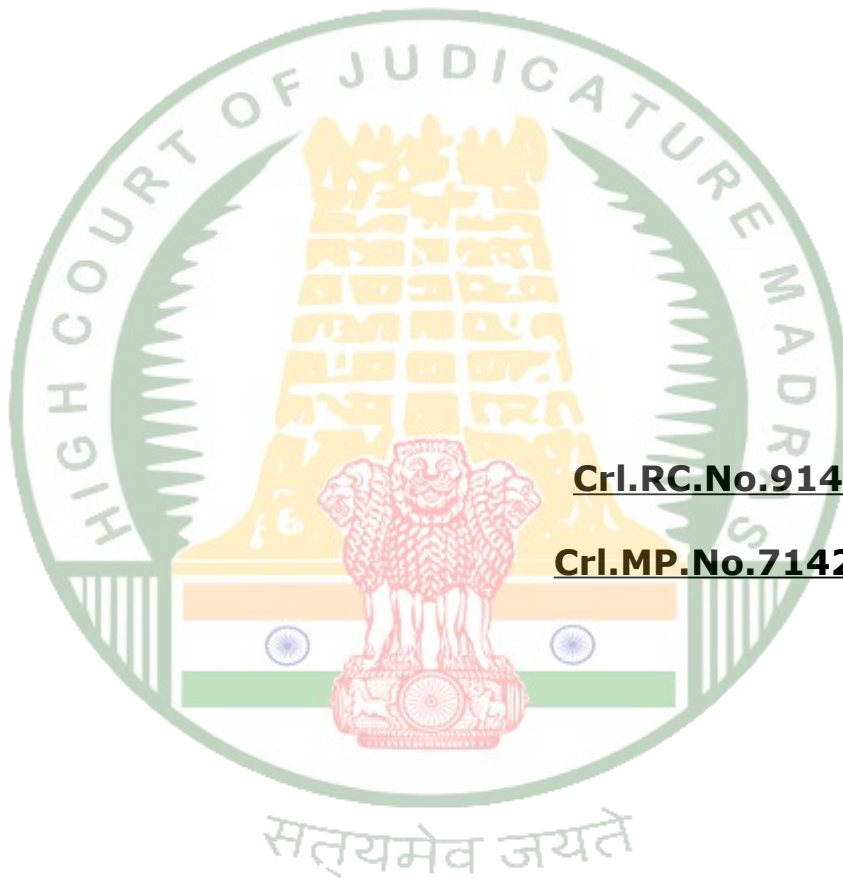


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R. SURESH KUMAR, J,

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and
Crl.MP.No.7142 of 2016

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22.09.2017