

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.13 of 2016

1.Fathima Zinna
2.Minor.Jagir Hussian

.. Petitioners

Vs.

1.Khaja Mohideen
2.The Superintending Engineer,
TANGEDCO (Workshop Circle)
Mettur Dam-1.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the petition order dated 10.07.2015 made in I.A.No.1 of 2015 in I.A.No.10 of 2013 in P.O.P.No.2 of 2013 on the file of the learned Subordinate Judge, Mettur.

For Petitioners : Mr.T.Arockiadass

For Respondent No.1 : Mr.B.Vasudevan

For Respondent No.2 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the petition order dated 10.07.2015 made in I.A.No.1 of 2015 in I.A.No.10 of 2013 in P.O.P.No.2 of 2013 on the file of the learned Subordinate Judge, Mettur.

2. The first petitioner is the wife and second petitioner is the son of the first petitioner and first respondent. The petitioners are the plaintiffs in POP.No.2/2013 and petitioners in I.A.No.1/2015. The petitioners filed the above POP.No.2/2013 claiming maintenance from the first respondent. Pending POP.No.2/2013, the petitioners filed I.A.No.10/2013 for claiming interim maintenance from the first respondent.

3. The learned Trial Judge has directed the first respondent to pay a sum of Rs.4,000/- per month as interim maintenance to the petitioners 1 and 2. But, the first respondent did not pay the said amount. Hence, the petitioners filed an Interlocutory Application in I.A.No.1/2015 against the respondents to issue notice to the respondents and attach a sum of Rs.12,000/- of the first respondent salary received from the second respondent/Garnishee under Order 21 Rule 48 of CPC by pro-order till realization of the arrears of maintenance amount and further attach of maintenance amount of Rs.4,000/- per month awarded by the Trial Court as per Order in I.A.No.10/2013 dated 13.08.2014.

4. The petitioners have sought for garnishee order as the first respondent was about to retire by the end of June, 2015 and notice was ordered to the respondents and respondents have appeared and sought time for filing counter. The application was adjourned on various dates and

the second respondent filed the counter on 29.06.2015. Finally, the application was taken up for hearing on 01.07.2015 and the same was dismissed on 10.07.2015.

5. Aggrieved against the order dated 10.07.2015 in I.A.No.1 of 2015 in I.A.No.10 of 2013, the present Civil Revision Petition is filed.

6. Heard Mr.T.Arockiadass, learned counsel for the petitioners and Mr.B.Vasudevan, learned counsel for the first respondent and there is no representation on behalf of the second respondent.

7. The petitioners have filed POP.No.2/2013 for maintenance and I.A.No.10/2013 for interim maintenance. The Court ordered a sum of Rs.4,000/- per month as interim maintenance and directed the first respondent to pay the same. But, the first respondent did not pay the said amount and he was about to retire by the end of June, 2015. Under these circumstances, the petitioners filed an Interlocutory Application in I.A.No.1/2015 for garnishee order directing the second respondent to deduct a sum of Rs.12,000/- towards the arrears from the salary of first respondent and Rs.4,000/- every month from the salary of the first respondent. The notice was ordered and served on the second respondent on 31.03.2015 and he took time for filing counter and also filed a counter

on 29.06.2015, in which, he has stated that he is not liable to attach the salary of the first respondent and has also stated that as to why the first respondent is not liable to pay interim maintenance to the petitioners. At the same time, the second respondent has stated that he will abide the orders of the Court.

8. According to the petitioners, the learned Trial Judge, dismissed the application without giving any valid reason.

9. From the materials available on record, it is seen that the first respondent was in service till 30.06.2015. The second respondent is the employer of the first respondent. On receipt of notice, the second respondent ought to have deducted the amount claimed by the petitioners till the date of retirement of the first respondent, i.e., 30.06.2015.

10. Under these circumstances, the second respondent is directed to pay a sum of Rs.12,000/- being the arrears of interim maintenance and Rs.4,000/- per month from March 2015 till June, 2015 amounting to Rs.16,000/- totalling to a sum of Rs.28,000/- (16000+12000), to the petitioners, within a period of six weeks from the date of receipt of a copy of this order, failing which, it is open to the petitioners to execute this order. It is open to the second respondent to recover the same from the

first respondent. With regard to the balance amount of arrears, it is open to the petitioners to initiate further proceedings.

With the above direction, the Civil Revision Petition is disposed of.
No costs.

01.06.2017

Speaking/Non-speaking order

Index :Yes/No

gv/cgi

V.M.VELUMANI, J.

gv/cgi

To

The Subordinate Judge,
Mettur.

C.R.P.(PD)No.13 of 2016

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