

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1689 of 2013

E.Vijaya Kumar @ Muhammed Anas .. Petitioner

Vs.

1.V.Kalaivani
2.Ayswariya
3.Anuja Kumari .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the learned III Additional Principal Judge, Family Court at Chennai dated 27.08.2012 made in I.A.No.1195 of 2011 in H.M.O.P.No.2319 of 2009.

For Petitioner : Mr.V.Chandrakanthan

For R1 : Mr.P.Murugan

For R2 & R3 : Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decretal order of the learned III Additional Principal Judge, Family Court at

Chennai dated 27.08.2012 made in I.A.No.1195 of 2011 in H.M.O.P.No.2319 of 2009.

2.The petitioner/husband filed H.M.O.P.No.2319 of 2009 against the respondent/wife on the file of the III Additional Principal Family Court at Chennai. The respondents 2 and 3 are the children born to them. The petitioner filed the said H.M.O.P against the first respondent for divorce on the ground of cruelty and desertion. The respondents filed I.A.No.1194 of 2011 under Section 25 of Hindu Marriage Act for a direction to the petitioner to pay a sum of Rs.1,000/- for travelling expenses for coming from Bangalore to Madras to attend the proceedings in H.M.O.P and I.A.No.1195 of 2011 under Section 24 & 25 of Hindu Marriage Act for a direction to the petitioner to pay a sum of Rs.5,000/- to each of the respondents as interim maintenance, totally Rs.15,000/- per month till the disposal of the H.M.O.P and for a direction to pay a sum of Rs.5,000/- towards litigation expenses.

3.According to the respondents, the first respondent filed M.C.No.132 of 2009 for maintenance of herself and her two minor children, claiming a sum of Rs.30,000/- per month. The first

respondent is not having any independent income. She has to maintain herself and two children, the respondents 2 and 3. She is depending upon her aged parents and her relatives. The petitioner is working as a telephone operator in Saudi Arabia and is getting Rs.50,000/- per month. The petitioner is evading from paying maintenance to the respondents. The first respondent is living in Bangalore along with respondents 2 and 3, who are minors. She has to come to Madras for every hearing by spending a sum of Rs.1,000/- to attend the H.M.O.P proceedings. She is attending the Court proceedings since 2009. She is claiming a sum of Rs.1,000/- as travel expenses; Rs.5,000/- to each of the respondents as interim maintenance and a sum of Rs.5,000/- towards litigation expenses.

4.The petitioner filed counter affidavit and denied all the allegations of the respondents. According to the respondents, the first respondent already filed M.C.No.132 of 2009 and the same is pending. The petitioner also has made various allegations against the first respondent with regard to her character. According to the petitioner, he was working as a labour in AMA Group, Riyadh, K.S.A. He sent money to the first respondent. The petitioner purchased a

TATA Sumo car for Rs.6,00,000/- in her name, so that it could be used as a taxi and first respondent would earn Rs.15,000/- per month for maintaining the family. The petitioner also purchased 20 Sovereign of jewels for first respondent. The petitioner has taken up a house on lease by paying Rs.1,00,000/- for a period of 5 years in Kaveri Nagar, KGF, Karnataka for the first respondent. The first respondent sold the TATA Sumo car to third party and received a sum of Rs.4,00,000/-. Due to the attitude and complaint given by the first respondent against the petitioner, his passport was seized and he was detained by police authorities and he could not return to his work. Suppressing these facts, the first respondent filed these petitions. In the circumstances, she is not entitled for any maintenance, litigation expenses and travelling expenses.

5.Before the learned Judge, no oral and documentary evidence was let in by the respondents. The petitioner did not let in any oral evidence; but marked 3 documents as Exs.R1 to R3.

6.The learned Judge, considering the averments made in the affidavit, counter affidavit and the documents marked as Exs.R1 to R3, ordered Rs.2,000/- to each of the respondents and a Sum of

Rs.5,000/- towards litigation expenses and a sum of Rs.500/- for the travelling expenses per hearing.

7. Against the said order dated 27.08.2012, made in I.A.No.1195 of 2011 in H.M.O.P.No.2319 of 2009, the petitioner has come out with the present Civil Revision Petition.

8. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record.

9. From the materials on record, it is seen that the petitioner has contended that his passport was seized and he was detained on the complaint given by the first respondent and he could not return to his work in Saudi Arabia. He stated that he has purchased jewels for the first respondent and a TATA Sumo car in the name of the first respondent for regular income of a sum of Rs.15,000/- to maintain the family, whereas she sold the said vehicle to third parties for a sum of Rs.4,00,000/-. The petitioner has produced and marked before the learned Judge the First Information Report, xerox copy of certificate of registration and xerox copy of delivery note and sale receipts as Exs.R1 to R3 respectively. The learned

Judge did not consider the contentions of the petitioner and documents produced and filed by him. The learned Judge also failed to consider that the first respondent did not deny the averments of the petitioner with regard to sending money from Saudi Arabia, purchasing jewels, TATA Sumo car and taking house on lease by paying Rs.1,00,000/- in the name of first respondent. In view of the failure on the learned Judge to consider these facts, the impugned order of the learned Judge is modified as follows:

A sum of Rs.2,000/- per month ordered as interim maintenance and Rs.500/- towards travelling expenses granted to the first respondent are set aside.

"The interim maintenance of Rs.2,000/- granted to the respondents 2 and 3 is modified, granting Rs.1,500/- per month to each of the minor children, respondents 2 and 3. The order of the learned Judge with regard to the litigation expenses is confirmed."

10. With the above modification, the Civil Revision Petition is partly allowed. No costs. The learned counsel for the petitioner submitted that from 10.07.2014, the first respondent is not appearing before the Family Court in H.M.O.P proceedings. The

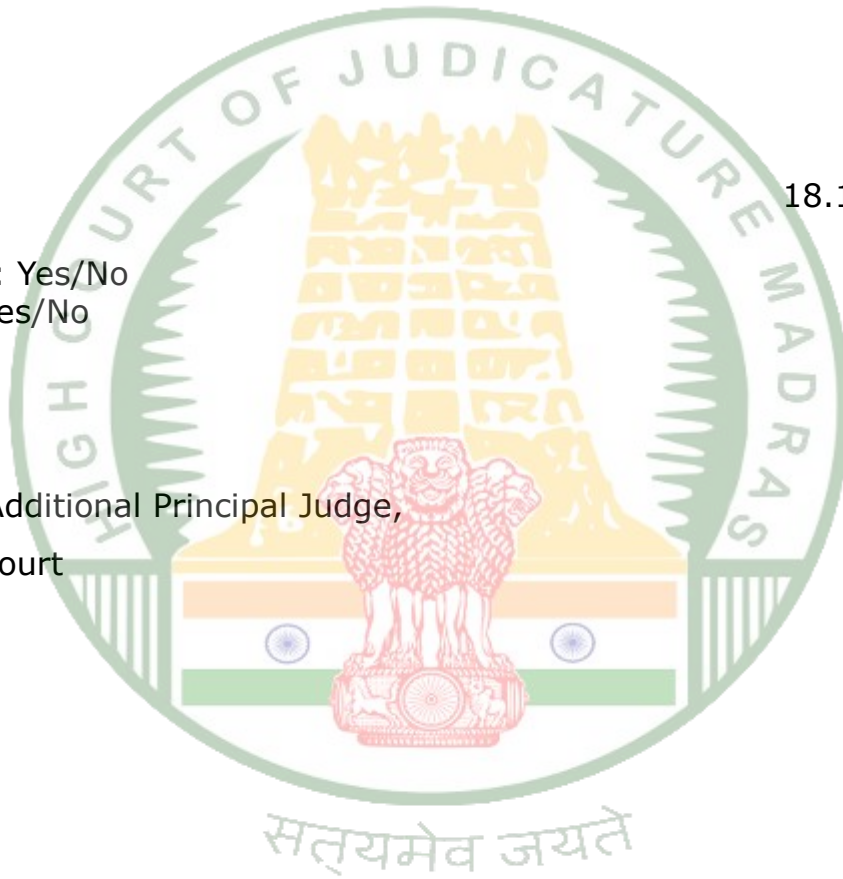
petitioner filed proof affidavit to that effect. The case is adjourned to 02.01.2018. The learned III Additional Principal Judge is directed to dispose of the H.M.O.P as expeditiously as possible and in any event not later than two months from the date of receipt of a copy of this order.

18.12.2017

Internet: Yes/No
Index: Yes/No
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To

The III Additional Principal Judge,
Family Court
Chennai



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V.M.VELUMANI, J.

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