

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.2504 of 2012

and

M.P.No.1 of 2012

Durairaj

.. Petitioner

vs

Uma Nalini

.. Respondent

Revision filed under Article 227 of Constitution of India against the fair order and decretal order dated 11.4.2012 made in I.A.No.191 of 2011 in I.A.No.96 of 2011 in H.M.O.P.No.32 of 1999 on the file of the Principal Sub-Court, Cuddalore.

For Petitioner : Mr.R.Gururaj

For Respondent : No Appearance

सत्यमेव जयते

ORDER

Challenging the order dated 11.04.2012 in I.A.No.191 of 2011, dismissing the petition seeking to restore I.A.No.96 of 2011, which was dismissed for default on 21.10.2011, the petitioner has filed the Civil Revision Petition.

2. I.A.No.191 of 2011 has been filed by the petitioner to restore I.A.No.96 of 2011, which was dismissed for default on 21.10.2011 pleading that on 21.10.2011, when the petition was posted for enquiry, he was attending election counting duty and, therefore, the petitioner could not attend Court, resulting in dismissal of the application for default.

3. The respondent filed counter stating that allegations in the petition were invented for the purpose of the case and in order to avoid paying maintenance and also to drag on the matter, the petitioner has filed the present petition. Unless the petitioner clears the arrears of maintenance, the petition cannot be entertained. It is stated that the petitioner did not care to pay the maintenance for the past 10 years and prayed for dismissal of the petition.

4. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

5. I heard Mr.R.Gururaj, learned counsel for the petitioner. Despite service of notice to the respondent through her lower court

counsel, the respondent has not entered appearance.

6. The point that arises for consideration is whether the trial Court was right in dismissing the petition filed by the petitioner to restore I.A.No.96 of 2011.

7. It appears that the petitioner has filed I.A.No.96 of 2011 to recall the order passed in I.A.No.65 of 2001 seeking interim maintenance. The trial Court, after enquiry, directed the petitioner to pay Rs.1,000/- to the child and Rs.500/- to the respondent. The aforesaid order was assailed by the petitioner before this Court by filing C.R.P.(PD) No.170 of 2005. By an order dated 04.03.2005, this Court dismissed C.R.P.(PD) No.170 of 2005.

8. Thereafter, the petitioner filed I.A.No.65 of 2001 to recall the order by saying that the respondent was employed in a private school and was drawing salary of more than Rs.15,000/- per month. Therefore, she was no longer entitled to claim maintenance.

9. It is settled that merely because wife is capable of earning is not a sufficient reason to reduce the maintenance awarded. It is not

necessary to comment in this revision on as to whether the respondent is capable of earning or she is actually earning. Those aspects have to be decided by the trial Court only in I.A.No.65 of 2001 filed by the petitioner.

10. The question to be considered is whether the reason stated by the petitioner for his non-appearance on 21.10.2011 is bona fide or not. The petitioner stated that on the date when the petition was posted, he was attending election counting duty and for the non-appearance, the petition was dismissed.

11. Though the respondent stated that in order to drag on the matter and in order to avoid payment of arrears of interim maintenance the petitioner has filed the petition, nothing has been produced to prove the same.

12. The reason stated by the petitioner for the non-appearance on 21.10.2011 appears to be bona fide and this Court is satisfied with the reasons stated in the affidavit filed in support of I.A.No.191 of 2011. This Court has not delved into merits of I.A.No.96 of 2011 and it is open to the trial Court to decide the same in

accordance with law. No prejudice would be caused to the respondent, if I.A.No.191 of 2011 is restored. Therefore, in the interest of justice and in order to give a chance to the petitioner to putforth his case in I.A.No.96 of 2011, the order impugned in this revision is liable to be set aside.

13. In the result, the Civil Revision Petition is allowed by setting aside the order dated 11.04.2012 passed in I.A.No.191 of 2011 in I.A.No.96 of 2011 in H.M.O.P.No.32 of 1999. The trial Court is directed to dispose of I.A.No.96 of 2011 in accordance with law by giving notice to both parties within a period of two months from the date of receipt of a copy of this order. It is made clear that this Court has not touched upon the merits of the matter and it is open to the trial Court to decide I.A.No.96 of 2011 in accordance with law. No costs. Consequently, M.P.No.1 of 2012 is closed.

सत्यमेव जयते

31.01.2017

Note: Issue order copy on 13.07.2018

vs

Index : Yes/No

Internet : Yes/No

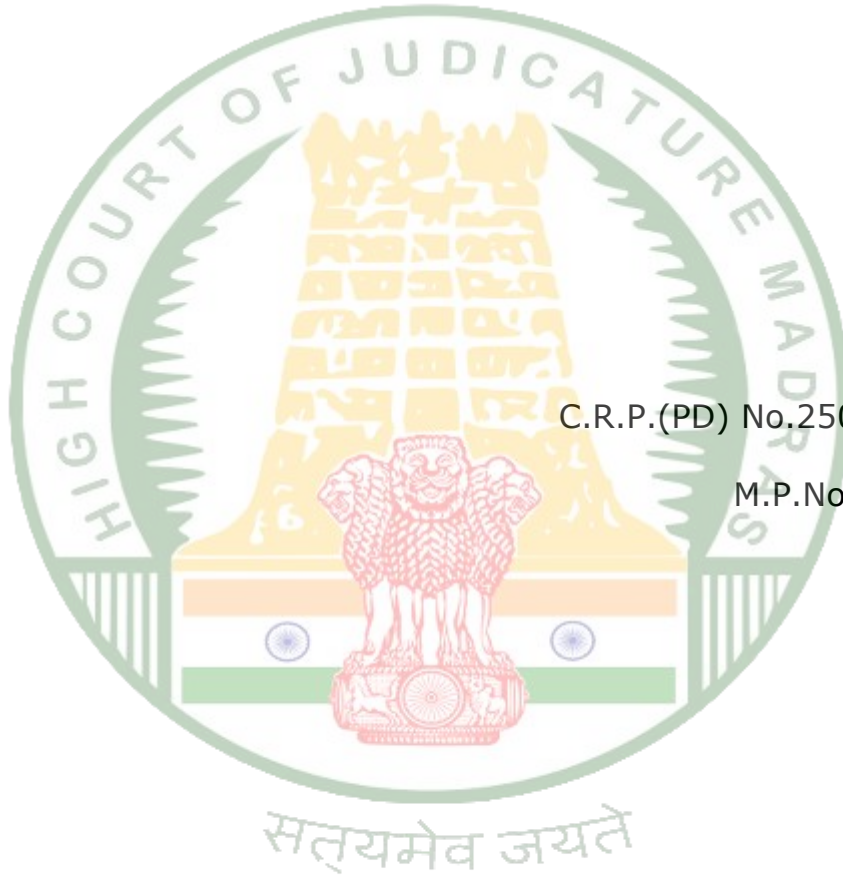
To

The Principal Subordinate Judge, Cuddalore.

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M.V.MURALIDARAN, J.

VS



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