

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM :

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

CRP(PD)No.4593 of 2013

and

M.P.No.1 of 2013

Santhanakrishnan

.. Petitioner

Vs.

Saroja

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Final Orders dated 13.02.2012 passed in I.A.No.24 of 2011 in HMOP.No.47 of 2011 on the file of the Additional Subordinate Judge at Namakkal.

For Petitioner : Mr.R.Nalliyappan

ORDER

The petitioner is the husband who has filed HMOP.No.47 of 2011 on the file of the learned Additional Subordinate Judge, Namakkal, seeking divorce against the respondent/wife on the ground of desertion under Section 13(1)(a)(b) of Hindu Marriage Act, 1955. While pendency of the HMOP, the respondent/wife has filed an application in I.A.No.24 of 2011 for seeking interim maintenance a sum of Rs.5,000/- per month till the disposal of HMOP.No.47 of 2011.

2.Considering her case, the learned Additional Subordinate Judge, Namakkal by order dated 13.02.2012 directing the petitioner/husband directed to pay a sum of Rs.2,500/- per month as interim maintenance and a sum of Rs.2,500/- to the respondent/wife for legal expenses for conducting the original petition conducting by the petitioner who is the husband in HMOP.

3.Challenging the said order, the present Civil Revision Petition has been filed by the petitioner/husband on the ground that he is not earning any money.

4.It is the case of the petitioner is that the petitioner has filed HMOP.No.47 of 2011 for divorce on various grounds including the desertion.

5.Though the marriage was performed between the petitioner and the respondent on 10.11.2006 and they were lived jointly. But, thereafter, she left the matrimonial home. Therefore, the petitioner has filed the above HMOP for divorce on the ground of desertion.

6.While pendency of the above, this petitioner has suffered with grievous injuries due to an accident and he is an unemployed. Therefore, the order passed by the learned Additional Subordinate Judge, Namakkal, granting a sum of Rs.2,500/- per month is not proper, since he is an unemployed, he could not able to pay the maintenance amount.

7.I heard Mr.R.Nalliyappan, learned counsel for the petitioner and perused the entire materials available on record.

8.It is the case of the respondent/wife is that though the petitioner/ husband has filed a petition for divorce. After filing the petition, the petitioner/husband has continued to live with her in Tiruppur. Thereafter, issuance of notice by the Court, he advised her that the matter would be compromised and asked her to go to her native place and advised her to come to Court on 05.04.2011 and not come to the Court at that time. But, when the respondent/wife came to the Court on 05.04.2011, the respondent has not come to the Court and hiding himself from seeing the respondent/wife.

9.It is the further case of the respondent/wife that the petitioner/ husband has vacated the matrimonial home in Tiruppur, since the petitioner/husband doing Ironing and Packing work at Tiruppur and earning a sum of Rs.500/- per day. Apart from this, the husband is also doing agricultural work, when the husband has left and deserted the wife, she is struggling to maintain herself and further she has to travel more than 50 kms to attend the Court. In the above circumstances, only she has filed the said application for the interim maintenance a sum of Rs.5,000/- to meet out her daily food, cloth, medical and legal expenses.

10.The petitioner/husband has simply stated that the wife is doing Tailoring work and earning a sum of Rs.3,000/- per week and also rented house by paying rent at the rate of Rs.2,000/- per month. Therefore, the petitioner/husband is not able to work due to the accident and hence he saying that he has not able to do any work and now staying at Namakkal and working as daily wager. The petitioner/husband stating that he has not doing any agricultural work. Therefore, the petitioner/husband prays this Court to dismiss the application.

11.Admittedly, the marriage was performed between the petitioner and the respondent on 10.11.2006 and they were jointly living for more than 3½ years. Due to the inducement of the husband's family, the divorce petition has been filed in HMOP.No.47 of 2011 without any reason.

12.It is the case of the husband is that he was met an accident, but due to his illness, he is unable to do his work, since he is an unemployed and without earning income, he struggling to run his family, but it is absolutely false, since the petitioner who is a man without working any work, he cannot run his family for daily

food and other things.

13. Apart from this, being the husband, the petitioner should maintain his wife and he should pay atleast her daily bread. Therefore, it is my absolute view that the order passed by the learned Judge is well considered order and it is not possible being a lady, the respondent cannot run her daily life without any income. Therefore, I am not inclined to interfere in the order passed by the learned Judge granting a sum of Rs.2,500/- per month as interim maintenance. But, on the other hand, this Court is inclined to see that the husband is met an accident and he is unable to run his family since he is an unemployed.

14. Therefore, considering all these points, I am inclined to modify the order of interim maintenance from Rs.2,500/- p.m. to Rs.2,000/- p.m. which will be the end of justice.

15. In the result:

(a) this Civil Revision Petition is partly allowed by modifying the order passed in I.A.No.24 of 2011 in HMOP.No.47 of 2011,

dated 13.02.2012, on the file of the learned Additional Subordinate Judge, Namakkal, directing the petitioner/husband to pay a sum of Rs.2,000/- p.m. instead of Rs.2,500/- p.m. as ordered by the learned Subordinate Judge, Namakkal from the date of filing the petition;

(b) the petitioner/husband also continuity to pay the amount till the disposal of HMOP.No.47 of 2011;

(c) the learned Additional Subordinate Judge, Namakkal, directed to dispose the HMOP.No.47 of 2011 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

08.02.2017

vs

Note: Issue order copy on 03.01.2019

Internet : Yes/No

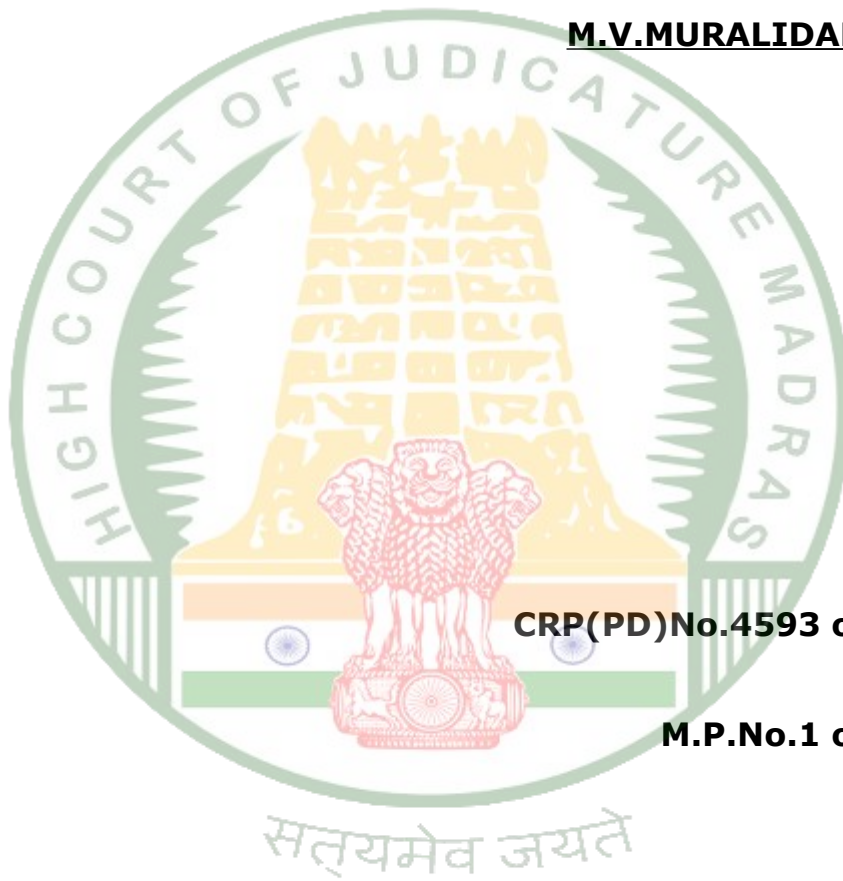
Index : Yes/No

To

The Additional Subordinate Judge,
Namakkal.

M.V.MURALIDARAN, J.

VS



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