

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.01.2017

Delivered on : 07.12.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4907 of 2012
and
M.P.Nos.1 of 2012 & 1 of 2015**

S.Karthikeyan

.. Petitioner

Vs.

1.K.Shailaja

2.Minor K.Jayavarshini

3.Minor K.Sri Saindavi

(Respondents 2 and 3 are daughters of
S.Karthikeyan & represented by their
mother & natural guardian, K.Shailaja,
the 1st respondent herein)

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 08.12.2012 passed in I.A.No.1189 of 2012 in O.P.No.2754 of 2011 on the file of the learned I Additional Family Court, Chennai.

For Petitioner : Mr.P.L.Narayanan
for M/s.S.Saravanakumar

For Respondents : Mr.G.Mohan Raj (for R1 to R3)

ORDER

The present Civil Revision Petition is filed challenging the order of interim maintenance passed by the learned I Additional Family Court Judge at Chennai by the husband.

2.It is the case of the revision petitioner that the marriage between the petitioner and the 1st respondent herein was solemnized as per Hindu Rites and Customs on 10.07.2003. In the said marital life, 2 female children were born to them namely K.Jeyavarshini and K.Sri Saindavi. The 1st respondent herein is the 2nd wife to the revision petitioner, since he divorced his 1st wife in the year 2003. The 1st respondent herein knowing very well about the 1st marriage of the revision petitioner, entered into the marriage with the petitioner. After marriage the 1st respondent herein started quarreling with the petitioner and made a false allegation that as if the petitioner is having illegal intimacy with some other person. The 1st respondent also lodged false police complaint against the petitioner on thrice. Therefore in order to give a quietest to the marital status, the petitioner herein filed divorce petition against his wife on the ground of cruelty in O.P.No.2754 of 2011 before the learned I Additional Family Court at

Chennai.

3. Pending disposal of the above O.P., the 1st respondent/wife filed Interim maintenance petition in I.A.No.1189 of 2012 seeking for the interim maintenance of Rs.20,000/- per month to the 1st respondent and Rs.15,000/- per month each to the respondents 2 and 3 herein, the minor daughters, totally a sum of Rs.50,000/- as interim maintenance to the respondents herein.

4. It is contented in the interim maintenance petition that the revision petitioner is doing business in the name and style of "Xylus Tech Engineering Pvt. Limited," at Ambathur and he is the owner of the said company having a turnover of Rs.65,00,000/- and apart from that he is also receiving rents from various properties. The 1st respondent/wife is an unemployed person and she is depending upon her sister to maintain her and her 2 children. The 1st respondent has no source of income to eke out her livelihood. The petitioner herein as a husband is bound to maintain his wife and 2 children. Hence she sought for a sum of Rs.50,000/- towards monthly maintenance to them, apart from claiming a sum of Rs.25,000/- towards litigation expenses.

5.The revision petitioner filed counter to the above said maintenance petition and contented that he admits that he is the owner of the company mentioned above, but turnover is not Rs.65,00,000/- as alleged by his wife. The petitioner herein is looking after his family in a well manner and he has been regularly paying the school fees to his two children, the respondents 2 and 3 herein. It is the contention of the revision petitioner that his wife is earning Rs.20,000/- per month as she is working in a private concern. It is false to state that his wife is depending upon her sister for her needs and she is staying in the revision petitioner's own house comfortably. As stated above, the revision petitioner only is taking care of all the expenses of his children. Therefore the respondents herein are not entitled for any maintenance amount from the revision petitioner and he prayed to dismiss the same.

6.The learned I Additional Family Court Judge, after considering the case of the either parties, was pleased to order interim maintenance of Rs.15,000/- per month to the 1st respondent/wife, a sum of Rs.8,000/- per month to the 2nd respondent and Rs.7,000/- per month to the 3rd respondent, totaling Rs.30,000/- per month from

the date of petition by order dated 08.12.2012. Apart from that the learned Judge was also pleased to order a sum of Rs.15,000/- towards litigation expenses. Challenging the same, the revision petitioner has come up with this Civil Revision Petition.

7.I heard Mr.P.L.Narayanan for M/s.S.Saravanakumar, learned counsel appearing for the petitioner and Mr.G.Mohan Raj, learned counsel appearing for the respondents 1 to 3 and the entire records are perused.

8.It is the main contention of the respondents that the revision petitioner is owning a company under the name and style of "Xylus Tech. Engineering Private Limited," and he is earning more than Rs.1,00,000/- per month from the said company. In order to prove the same the respondents herein filed Ex-P1 enquiry report in question form given before the Protection Officer for the complaint given by his wife under Domestic Violence Act and the said document is also produced to this Court in the form of typed set. This Court has closely perused the said document wherein the revision petitioner has given answer to a question put to him that what are you doing? and what is your income? For that he has given a reply saying that his monthly

income is Rs.1,00,000/- from Xylus Tech Engineering Private Limited. Therefore, this Court has no hesitation to come to the conclusion that the 1st respondent/wife has clearly established the factum of monthly income of the revision petitioner.

9. Whereas the revision petitioner has not established the fact of earning capacity of his wife/1st respondent herein by producing any clinging document, except his statement in the counter affidavit. Per contra, the learned counsel for the revision petitioner would contend that as on today the revision petitioner is paying school fees to his two daughters the respondents 2 and 3 herein and to prove the same, he has produced the payment of school fee receipts in the typed set of papers filed by him. The learned counsel for the petitioner would contend that the Family Court without properly considering the above said facts, ordered a huge amount of Rs.30,000/- towards monthly maintenance to the respondents herein and the same is liable to be set aside. In the considered opinion of this Court, the payment of school fees to the children will not absolve the revision petitioner from paying maintenance amount to his wife and children. The cost of living at present is increasing day by day. That too in the City like Chennai a sum of Rs.30,000/- to three person to lead a decent family life is just

and necessary. Therefore, in my view, the maintenance amount awarded by the Family Court is very reasonable one in the present scenario. Regarding payment of maintenance the Hon'ble Supreme Court held that even a divorced wife is also entitled for maintenance.

10.The learned counsel for the revision petitioner would further submit that the revision petitioner is having bank loan and for that he has been paying a sum of Rs.1,00,000/- every month to the State Bank of India and in order to show the same he has produced the payment of bank Challan before this Court. Further he has also produced a sale deed dated 18.07.2008 which stood in the name of the 1st respondent and from which he contended that she is owning a property worth about nearly several lakhs. Out of the said property the 1st respondent is getting sufficient income. However, the said contention was repudiated by the 1st respondent stating that the said property was brought under Court auction sale and possession notice was also issued by DRT.

11.The learned counsel for the respondents also produced the judgment of Punjab and Haryana High Court in the case of **Amit Kumar v. Nayat Dubly in C.R.No.6198/13 decided on**

12.12.2016. In the said case the maintenance awarded by the District Judge, Pathankot was confirmed by the High Court of Punjab and Haryana, wherein it is held that:

“As per the settled position in law, the wife is entitled to enjoy the same amenities of life as she would have been had she been staying in the matrimonial home. Taking into consideration prices of daily necessities of life, expenses on education of the children who have to meet the challenges of the society and face peer pressure, I find it difficult to accept contention of the petitioner that maintenance pendente lite issued by the Court below is on higher side and requires reduction.”

12. In view of the discussion above, I do not find any merits in this Civil Revision Petition and the interim maintenance awarded by the Family Court is just and reasonable for the present day cost of living for 3 persons and therefore, considering the facts and circumstances of the case, this Civil Revision Petition fails and the same is liable to be dismissed. Accordingly it is dismissed.

13.In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.1189 of 2012 in O.P.No.2754 of 2012 dated 08.12.2012, on the file of the learned I Additional Family Court, Chennai;

(b) the learned I Additional Family Court, Chennai, is directed to take up the FCOP.No.2754 of 2012 on day to day basis, without giving any adjournments to either parties and dispose of the same within a period of three months from the date of receipt of a copy of this order, No costs. Consequently, connected Miscellaneous Petitions are closed.

07.12.2017

vs

Speaking Order
Index:Yes

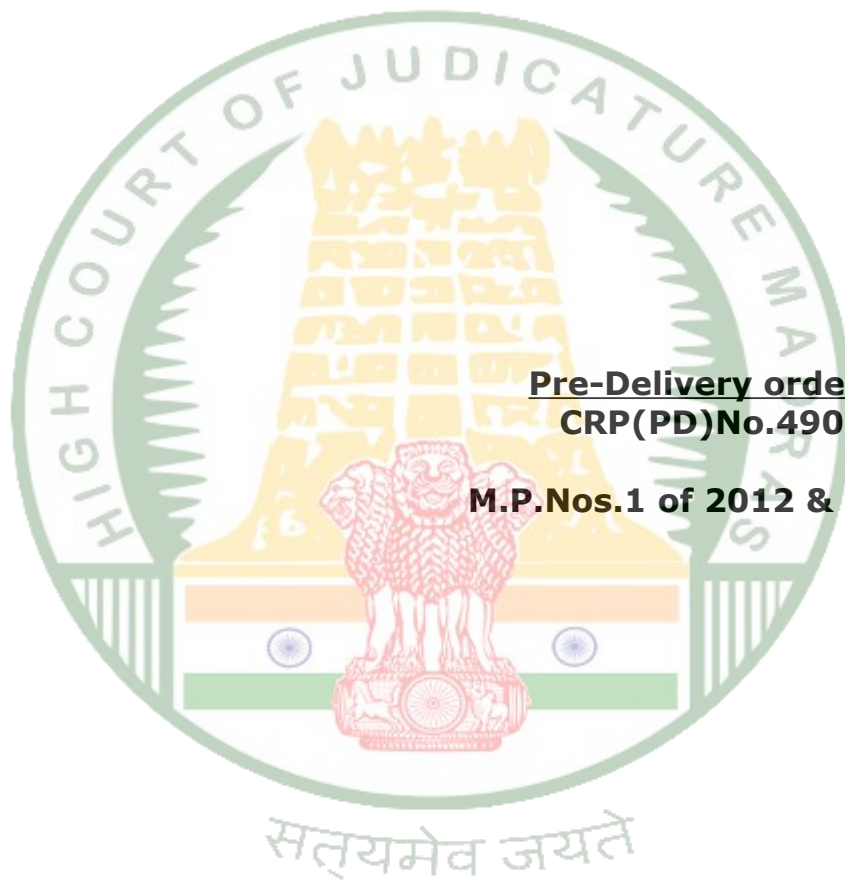
To

The I Additional Family Court,
Chennai.

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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.4907 of 2012
and
M.P.Nos.1 of 2012 & 1 of 2015

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