



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 06.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.1477 of 2015 & 44 of 2016

and

C.M.P(MD)No.189 of 2016

Rathikani .. Petitioner/Petitioner/
Respondent in both C.R.P's

-vs-

Manimaran .. Respondent/Respondent/
Petitioner in both C.R.P's

PRAYER in C.R.P(MD)No.1477 of 2015:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the decreetal order made in I.A.No.90 of 2012 in H.M.O.P.No.43 of 2010, dated 30.03.2015 on the file of the Sub Court, Srivilliputtur.

PRAYER in C.R.P(MD)No.44 of 2016:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.83 of 2015 in H.M.O.P.No.147 of 2012, dated 18.11.2015 on the file of the Sub Court, Srivilliputtur.

For Petitioner : Mr.S.Balamurugan
(in both C.R.P's)

For Respondent : Mr.V.B.Sundhareshwar
(in both C.R.P's)

COMMON ORDER

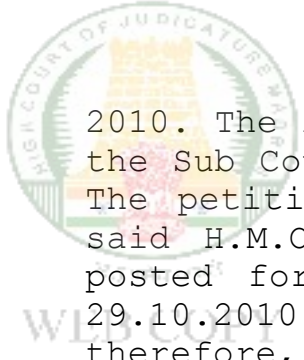
C.R.P(MD)No.1477 of 2015 has been filed against the decreetal order made in I.A.No.90 of 2012 in H.M.O.P.No.43 of 2010, dated 30.03.2015 on the file of the Sub Court, Srivilliputtur.

2.C.R.P(MD)No.44 of 2016 has been filed against the order and decree made in I.A.No.83 of 2015 in H.M.O.P.No.147 of 2012, dated 18.11.2015 on the file of the Sub Court, Srivilliputtur.

3.The brief facts of the case in C.R.P(MD)No.1477 of 2015 is

<https://hcservices.courts.gov.in/hcservices/>

The petitioner/wife is the respondent in H.M.O.P.No.43 of



2010. The respondent/husband filed the said H.M.O.P on the file of the Sub Court, Srivilliputhur, for restitution of conjugal rights. The petitioner has filed the counter-affidavit and contested the said H.M.O.P. The respondent was examined in chief and it was posted for cross-examination on the part of the petitioner on 29.10.2010. The petitioner did not appear on that day and therefore, ex-parte decree was passed. The petitioner filed an application to set aside the ex-parte decree along with I.A.No.90 of 2012 on the file of the Sub Court, Srivilliputhur, to condone the delay of 374 days in filing the application to set aside the ex-parte decree.

(ii) According to the petitioner, she came to know about the ex-parte decree only on 02.12.2011 when she met her Advocate, after receiving notice in H.M.O.P.No.147 of 2012 filed by her husband for divorce. Immediately, she filed an application to set aside the ex-parte decree and the present application to condone the delay of 374 days in filing the application to set aside the ex-parte decree.

(iii) The respondent filed counter-affidavit and denied all the averments made in the affidavit and submitted that the petitioner after knowing fully well about the ex-parte decree, issued notice to the respondent, dated 17.12.2010 through her Advocate. In the said notice, ex-parte decree dated 29.10.2010 was mentioned and the respondent sent reply dated 27.12.2010 and therefore, the contention of the petitioner that she came to know about the ex-parte decree only on 02.12.2011 is not correct and prayed for dismissal of the application.

4.Before the learned Judge, Ex.R.1-certified copy of the notice dated 07.12.2010 issued by the petitioner to the respondent and Ex.R.2-certified copy of reply notice dated 27.12.2010 issued by the respondent to the petitioner were filed and the learned Judge, considering the averments made in the affidavit and counter-affidavit and Exs.R.1 and R.2, dismissed the application holding that the petitioner has not given any valid and sufficient reason for condoning the delay. Against the said order, C.R.P(MD) No.1477 of 2015 has been filed.

5.The brief facts of the case in C.R.P(MD)No.44 of 2016 is as follows:-

The respondent has filed a petition in H.M.O.P(MD)No.147 of 2012 on the file of the Sub Court, Srivilliputtur against the petitioner for divorce. In the said H.M.O.P, the petitioner has filed an application in I.A.No.12 of 2012 for interim maintenance for her and minor son, namely Jusvanth. The learned Judge, after ~~considering the materials available on record~~ directed the respondent to pay a sum of Rs.2,500/- as interim maintenance to his minor son, by an order, dated 09.03.2012. Now, the petitioner



has filed the present application in I.A.No.83 of 2015 seeking for enhancement of interim maintenance already ordered in I.A.No.12 of 2012 from Rs.2,500/- to Rs.10,000/-.

(ii) According to the petitioner, she has spent Rs.30,000/- towards school fees and spending Rs.8,000/- to Rs.10,000/- every month for her minor son. The respondent is working as an Assistant Headmaster and is earning Rs.50,000/-.

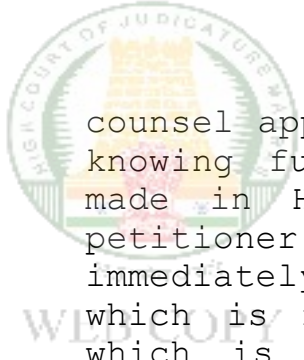
(iii) The respondent filed counter-affidavit and submitted that the petitioner is working as a Teacher and she is earning Rs.45,000/- per month. The petitioner has filed an application in I.A.No.12 of 2012 for maintenance of her minor. The said application was considered on merits and a sum of Rs.2,500/- is granted as interim maintenance to the minor son and the respondent is paying the maintenance regularly and there is no circumstances for enhancement.

(iv) The learned Judge, considering the averments in the affidavit and counter-affidavit and the materials available on record, granted a sum of Rs.13,000/- being 50% of the amount already spent towards educational expenses and rejected the claim of the petitioner for enhancement of compensation on the ground that there is no change in circumstances. Against the said order, the present C.R.P(MD)No.44 of 2016 has been filed.

6.As far as C.R.P(MD)No.1477 of 2015 is concerned, the learned counsel appearing for the petitioner submitted that the learned Judge erred in dismissing the application in I.A.No.90 of 2012 for condoning the delay of 374 days in filing the application to set aside the ex-parte decree. The learned Judge ought to have seen that the respondent requested the petitioner not to contest the petition in H.M.O.P.No.43 of 2010 and promised to take her back to the matrimonial home. The respondent failed to comply the said promise, but proceeded with the said H.M.O.P and the same was decreed ex-parte. The petitioner came to know about the ex-parte decree only on 02.12.2011, when she received the notice in H.M.O.P.No.147 of 2012 filed by the respondent for divorce and therefore, prayed for allowing the Civil Revision Petition.

7.As far as C.R.P(MD)No.44 of 2016 is concerned, the learned counsel appearing for the petitioner submitted that the learned Judge erred in rejecting the claim of the petitioner for enhancement of interim maintenance for her minor son as claimed in I.A.No.83 of 2015. The learned Judge erred in holding that that there is no change in circumstances for enhancement of interim maintenance. On the other hand, the respondent, as a father is liable to maintain his minor son and therefore, prayed for

8.As far as C.R.P(MD)No.1477 of 2015 is concerned, the learned



counsel appearing for the respondent submitted that the petitioner knowing fully well about the ex-parte decree, dated 29.10.2010 made in H.M.O.P.No.43 of 2010 and on 29.10.2010 itself, the petitioner failed to appear and did not file any application immediately. This could be seen from the notice, dated 17.12.2010, which is marked as Ex.R.1 and reply notice, dated 27.12.2010, which is marked as Ex.R.2. Therefore, the contention of the petitioner that she came to know about the ex-parte decree only on 02.12.2011 is contrary to the facts and prayed for dismissal of the Civil Revision Petition.

9.As far as C.R.P(MD)No.44 of 2016 is concerned, the learned counsel appearing for the respondent submitted that after contest in I.A.No.12 of 2012 interim maintenance of Rs.2,500/- granted to the minor son and the respondent is regularly paying the amount without any delay. The petitioner is also working as a Teacher in a Government Higher Secondary School and she is earning Rs.47,000/- per month and she can without any difficulty maintain her minor son and a sum of Rs.2,500/- ordered is reasonable and there is no change of circumstances for enhancement of interim maintenance. Only with a view to prolong the proceedings in H.M.O.P.No.147 of 2012, the petitioner has come out with the present application and prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

11.As far as C.R.P(MD)No.1477 of 2015, the contention of the petitioner is that she came to know about the ex-parte decree only on 02.12.2011 and immediately, she filed the present application to condone the delay of 374 days in filing the application to set aside the ex-parte decree. According to the petitioner, the respondent promised to take back her to the matrimonial home and therefore, she did not contest the case. This contention is contrary to the facts as it could be seen from the notice, dated 17.12.2010 and reply notice, dated 27.12.2010, which have been marked as Exs.R.1 and R.2.

12.A reading of these documents, it is clearly seen that the petitioner is aware of ex-parte decree, dated 29.10.2010. The learned Judge has considered the fact that the petitioner knew about the ex-parte decree and did not take immediate steps, dismissed the application on the ground that the petitioner has not given any sufficient reason to condone the delay in filing the petition to set aside the ex-parte decree. In the circumstances, there is no error or illegality warranting interference by this

<https://hccourtrecordservices.org/> C.R.P(MD)No.1477 of 2015 is dismissed.

13.As far as C.R.P(MD)No.44 of 2016 is concerned, on an



earlier occasion a sum of Rs.2,500/- was ordered to be paid by the respondent towards interim maintenance for his minor son. The petitioner is claiming Rs.10,000/- towards maintenance for her minor child and also claiming Rs.30,000/- towards educational expenses. The learned Judge, considering the receipts filed by the petitioner stated that she has spent Rs.26,000/- towards educational expenses, directed the respondent to pay a sum of Rs.13,000/- and dismissed the claim of the petitioner for enhancement of maintenance on the ground that there is no change in circumstances. The respondent has stated that the petitioner is working as a Teacher and earning a sum of Rs.47,000/-. This contention of the respondent is not denied by the petitioner. The respondent is working as an Assistant Headmaster in the Government School and he is earning Rs.50,000/-. As a father, he has to maintain the minor child. On 09.03.2012, a sum of Rs.2,500/- was granted as interim maintenance for the minor son of the petitioner. From 2012 to 2016, the cost of living has been increased. Taking into consideration of the income of the respondent as well as cost of living interim maintenance is enhanced to Rs.3,500/- from Rs.2,500/- towards interim maintenance of minor son from the date of petition. Hence, C.R.P(MD)No.44 of 2016 is partly allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Sub Judge,
Srivilliputhur.

+2cc to Mr.V.B.Sudhareshwar, Advocate Sr.Nos.1620 & 1621
+1cc to Mr.S.Balamurugan, Advocate Sr.No.1622

C.R.P (MD) Nos.1477
of 2015 & 44 of 2016
and
C.M.P (MD) No.189 of 2016
06.01.2017

ps
um/mpa/sar III/25.01.2017/5p/5c