



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2567 of 2015 (PD)

Homie Kanaga Bhabha, S/o.Thanasekaran .. Petitioner
Vs.

Anitha .. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair and decreetal order, dated 08.09.2015, passed in I.A.No.2 of 2014 in H.M.O.P.No.15 of 2013 by the learned Subordinate Judge, Sivakasi.

For Petitioner : Mr.C.Mahadevan

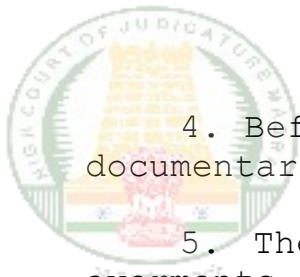
For Respondent : Mr.N.Dilipkumar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order, dated 08.09.2015, passed in I.A.No.2 of 2014 in H.M.O.P.No.15 of 2013, by the learned Subordinate Judge, Sivakasi.

2. The petitioner is the husband and the respondent is the wife. The respondent filed H.M.O.P.No.15 of 2013 under Section 9 of the Hindu Marriage Act, 1955, before the Subordinate Court, Sivakasi, for restitution of conjugal rights. The petitioner filed counter affidavit on 25.09.2013 itself. Subsequently, the respondent filed I.A.No.2 of 2014 claiming maintenance of Rs.50,000/- each to her and to her two children and also a further sum of Rs.50,000/- towards litigation expenses. According to the respondent, the petitioner is working in M/s.Eriez Magnetic Pvt. Ltd., 154, North Bourne Road, Campbell Field, Victoria and earning a sum of Rs.5,00,000/- per month.

3. The petitioner filed counter affidavit and denied all the averments made by the respondent and stated that he is not having any permanent job and as and when gets job, he will get meagre income. The petitioner also stated in the counter that the respondent is running a Fireworks showroom in Sivakasi, under the name and style of 'Anitha Agencies' and earning a sum of Rs.50,000/- per month and prayed for dismissal of the application.



4. Before the learned Subordinate Judge, Sivakasi, no oral and documentary evidence was let in.

5. The learned Subordinate Judge, Sivakasi, considering the averments made in the affidavit, counter affidavit and also the materials available on record, partly allowed the application granting a sum of Rs.1,50,000/- per month towards maintenance to the respondent and her two children.

6. Against the said order dated 08.09.2015, the petitioner has come out with the present Civil Revision Petition.

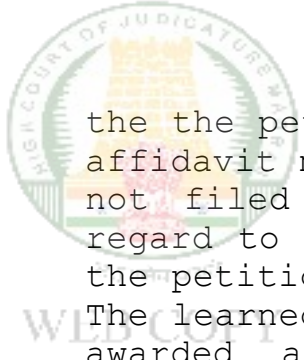
7. The learned counsel for the petitioner submitted that the learned Subordinate Judge, Sivakasi, failed to see that the respondent did not file any document to substantiate her claim that the petitioner is earning a sum of Rs.5,00,000/- per month in Australia. He further submitted that the learned Subordinate Judge also failed to consider the fact that the petitioner is not having permanent job in Australia and is doing only temporary job. The respondent is earning a sum of Rs.50,000/- per month by doing fireworks business. He also submitted that the learned Subordinate Judge erroneously allowed the application as prayed for granting Rs.1,50,000/- to the respondent and her two children and prayed for allowing the Civil Revision Petition.

8. The learned counsel for the respondent submitted that the petitioner has not denied that he is earning a sum of Rs.5,00,000/- per month in the counter affidavit and he is having permanent job and it is not correct to state that he is having temporary job. He further submitted that the respondent is not doing any business and she is depending on her parents for her day-to-day expenses.

9. In support of his submissions, the learned counsel for the respondent relied on the judgment of the Hon'ble Apex Court reported in 2010 (12) SCC 242 [Neeta Rakesh Jain Vs. Rakesh Jeetmal Jain], wherein it has been held that while fixing the interim maintenance, the Court has to give due regard to the income of the respondent and the petitioner's own income and in the matter of making an order for interim maintenance, the discretion of the Court must be guided by the criterion provided in the Section, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status; the background from which, both the parties come from and the economical dependence of the petitioner.

10. I have considered the submissions of the learned counsel appearing for the parties and perused the materials available on

11. From the materials available on record, it is seen that



the the petitioner and the respondent in the affidavit and counter affidavit made allegations against each other on merits. They have not filed any document to substantiate their claim i.e., with regard to income. The respondent has not denied the averments of the petitioner that she is earning a sum of Rs.50,000/- per month. The learned Subordinate Judge without any materials on record, has awarded a sum of Rs.1,50,000/- towards maintenance to the respondent and her two children. The quantum so awarded is highly excessive. It is the duty of the husband to maintain his wife and also his children. It is not disputed that the petitioner is working in Australia. Taking into consideration of the facts and circumstances of the case, I hold that a sum of Rs.25,000/- to the respondent and Rs.10,000/- each to the minor children will be fair and reasonable amount for maintenance. In the circumstances, the order of the learned Subordinate Judge, Sivakasi, is modified as above. Accordingly, this Civil Revision Petition is disposed of. No costs. The H.M.O.P. is of the year 2013. The learned Subordinate Judge, Sivakasi, is directed to dispose of H.M.O.P.No.15 of 2013 as expeditiously as possible, in any event, not later than 31.07.2017. Both the learned counsel for the petitioner and respondent submitted that if the petitioner and the respondent meet each other, there is a possibility of re-union. In such circumstances, it is open to the parties to make submissions before the learned Subordinate Judge, Sivakasi, to relegate the parties to go before the Mediation and Conciliation Centre.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Sivakasi.

+1cc to M/s.GANTHIMATHI Advocate in SR. No.6779

+1cc to M/s. N.DILIP KUMAR Advocate in SR. NO.6738

SMN2

JS/MR/28.02.2017/3P-4C

C.R.P (MD) No.2567 of 2015 (PD)
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