



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2586 of 2015 (PD)

&

M.P. (MD) No.2 of 2015

T.Ganeshkanna @ Kulanthaiyan

.. Petitioner/Respondent/
Petitioner

Vs.

Hema

.. Respondent/Petitioner/
Respondent.

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.02.2015, passed in I.A.No.38 of 2014 in H.M.O.P.No.77 of 2013, by the learned II Additional Subordinate Judge, Karur.

For Petitioner : Mr.P.Thiagarajan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 10.02.2015, passed in I.A.No.38 of 2014 in H.M.O.P.No.77 of 2013, by the learned II Additional Subordinate Judge, Karur.

2. The petitioner is the husband and the respondent is the wife. The marriage between the petitioner and the respondent was solemnized on 20.05.2005. Due to misunderstanding between the parties, the petitioner filed H.M.O.P.No.617 of 2012 before the Family Court, Coimbatore, for divorce, on the ground of cruelty and subsequently, the said H.M.O.P. was transferred to the Principal Subordinate Court, Karur, and renumbered as H.M.O.P.No.77 of 2013. The respondent filed I.A.No.38 of 2014 in H.M.O.P.No.77 of 2013 seeking interim maintenance of Rs.6,000/- per month and another sum of Rs.10,000/- towards litigation expenses. According to the respondent, the petitioner is earning a sum of Rs.1,00,000/- per month from various sources, including money lending business and he is a wholesale coconut merchant and is also doing real estate business. The petitioner filed counter affidavit and denied all the averments made by the respondent and submitted that the respondent is having sufficient means to maintain herself and due to continuous legal battle initiated by the petitioner has lost all his jobs and he is not having any source of income and the respondent has come forward with the petition, with a view to drag on the legal proceedings.



3. The learned II Additional Subordinate Judge, Karur, considering the averments made in the affidavit, counter affidavit and also the materials available on record, allowed the application directing the petitioner to pay a sum of Rs.6,000/- per month to the respondent from the month of January 2015 till the disposal of H.M.O.P.No.77 of 2013 and also a sum of Rs.10,000/- towards litigation expenses.

4. Against the said order dated 10.02.2015, the petitioner has come out with the present Civil Revision Petition.

5. The learned counsel for the petitioner submitted that the respondent has not produced any document before the learned II Additional Subordinate Judge, Karur, to show that the petitioner is earning a sum of Rs.1,00,000/- per month. On the date of hearing, the respondent or her counsel did not appear and substantiate her claim made in the affidavit. The learned II Additional Subordinate Judge without considering the contention of the learned counsel for the petitioner that the respondent has not filed any evidence to substantiate her case with regard to income of the petitioner. He further submitted that the respondent is having sufficient means to maintain herself and she has filed the petition only with an intention to harass the petitioner.

6. I have heard the learned counsel for the petitioner. Though notice was served on the respondent and her name is printed in the cause list, she has not chosen to appear either in person or through counsel.

7. From the materials available on record, it is seen that both the petitioner and the respondent have not produced any document to show that the income, which the petitioner is getting per month. The learned II Additional Subordinate Judge has not considered this aspect. The learned II Additional Subordinate Judge has held that seeking interim maintenance and litigation expenses is the right of the respondent. It is well settled that it is the duty of the husband to maintain his wife. The petitioner must pay sufficient amount for the maintenance of his wife. In the present case, the learned II Additional Subordinate Judge failed to consider the contention of the petitioner that he is not earning as alleged by the respondent and the contention of the petitioner that the respondent has income to maintain herself. The learned II Additional Subordinate Judge also failed to consider that the respondent has not produced any evidence to substantiate her case. Considering all the materials on record, it will be in the interest of justice, the order of the learned II Additional Subordinate Judge is modified directing the petitioner to pay a sum of Rs.5,000/- every month to the respondent. The learned II Additional Subordinate Judge directing the petitioner to pay a sum of Rs.10,000/- towards litigation expenses is set aside.



8. With the above modification, this Civil Revision Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed. The H.M.O.P. is of the year 2013. The learned II Additional Subordinate Judge, Karur, is directed to dispose of H.M.O.P.No.77 of 2013, as expeditiously as possible, in any event, not later than 31.07.2017.

Sd/
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar.

To

The II Additional Subordinate Judge,
Karur.

+1CC to M/S.N.Krishnaveni, Advocate, SR.No. 9100

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&
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