



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).Nos.161 of 2016 and
CMP(MD).Nos.734 and 3097 of 2016

B. Manavalan : Petitioner/Respondent/Petitioner

Vs.

M. Minu Choudri : Respondent/Petitioner/Respondent

Prayer: Theis Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order passed by the learned Subordinate Judge, Theni, dated 10.12.2015 in I.A.No.73 of 2015 in HMOP.No.94 of 2014.

For Petitioner : Mr.N. Dilipkumar
For Respondents : Mr.D. Malaichamy

ORDER

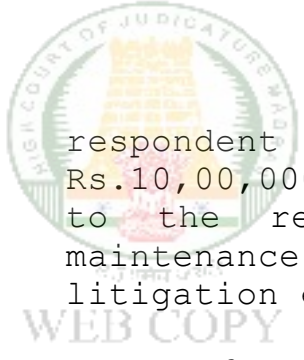
This Civil Revision Petition is filed to to set aside the order passed by the learned Subordinate Judge, Theni, dated 10.12.2015 in I.A.No.73 of 2015 in HMOP.No.94 of 2014.

2. The petitioner, husband filed HMOP.No.94 of 2014 for divorce. The respondent, wife filed counter statement in the above said HMOP. Subsequently, she filed I.A.No.73 of 2015 for interim maintenance of Rs.25,000/- for herself and Rs.15,000/- for child and Rs.2,00,000/- as litigation expenses.

3. According to the respondent, the petitioner is a Contractor and he is earning Rs.2,00,000/- per month and also getting Rs.10,00,000/- as agricultural income per year. He is leading a luxurious life in the society.

4. The petitioner filed counter and submitted that marriage between the petitioner and respondent was solemnized on 13.06.2013. The petitioner and respondent were living as husband and wife only for one month. The respondent and her parents cheated the general public of huge amounts and they are absconding and the respondent's where about is not known. The respondent did not inform about the birth of the child. The respondent is capable of maintaining herself without financial help from the petitioner.

5. The learned Judge considering the averments and taking note of the fact that petitioner did not deny the averments of the



respondent that he is earning Rs.2,00,000/- per month and Rs.10,00,000/- as agricultural income awarded a sum of Rs.10,000/- to the respondent and Rs.5,000/- to the child as interim maintenance. The learned Judge has also granted Rs.50,000/- as litigation expenses.

6. Against the said order present Civil Revision Petition has been filed.

7. The learned counsel appearing for the petitioner submitted that the learned Judge failed to consider that apart from stating that the petitioner is earning a sum of Rs.2,00,000/- per month and Rs.10,00,000/- as agricultural income, the respondent failed to substantiate by any acceptable evidence by letting in evidence and by marking the documents.. The learned Judge failed to see that the petitioner and respondent were living together only for one month and the respondent and her parents cheated the general public huge amount and are absconding. The respondent did not inform the birth of the child to the petitioner.

8. The learned counsel for the respondent submitted that the petitioner did not deny the income as stated by the petitioner and the learned Judge after considering all the materials on record awarded interim maintenance and litigation expenses. The learned counsel further submitted that petitioner gave an undertaking before this Court that the petitioner would not proceed with HMOP and obtained interim order of stay granting maintenance to the respondent and child. Contrary to said undertaking, petitioner proceeded with HMOP and obtained ex parte decree in the HMOP in order to defeat the interim maintenance to be paid to the respondent.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

10. The contention of the learned counsel for the respondent that after giving an undertaking before this Court that the petitioner will not proceed further in HMOP and obtained interim stay, proceeded with the HMOP and obtained ex parte decree. It is not the case of the respondent that even after bringing to the notice of the learned Judge about undertaking given by the petitioner not to proceed further with the HMOP, the learned Judge proceeded in the OP and passed ex parte decree.

11. From the report of the learned Judge, it is seen that the respondent filed Tr.C.M.P.No.857 of 2015 and the same was dismissed by this Court. Subsequently, the respondent did not appear before the court in spite of number of adjournments. An ex parte decree was passed. Therefore, it is open to the respondent to prosecute the interlocutory application for setting aside the ex parte decree.



12. The respondent filed Interlocutory application for interim maintenance stating that the petitioner is not maintaining the respondent and minor child and petitioner is getting huge income and leading luxurious life. The learned Judge taking note of the fact that the petitioner did not deny the statement of the respondent about the income of the petitioner awarded interim maintenance of Rs.10,000/- to the respondent and Rs.5,000/- to the child. The said order is confirmed. As far as the litigation expenses is concerned, the learned Judge granted Rs.50,000/-, which is excessive and the same is reduced to Rs.20,000/-.

13. Accordingly, the Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

To

The Subordinate Judge, Theni

Copy to

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to MR.N.Dilip Kumar, ADVOCATE, SR NO:2335
+1 cc to MR.D.Malaichamy, ADVOCATE, SR NO:1855

trp
sva/mr/21.02.2017/3p/5c

CRP (MD).Nos.161 of 2016 and
CMP(MD).Nos.734 and 3097 of 2016
09.01.2017