



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.1679 of 2016
and C.M.P(MD)No.8186 of 2016

Russel Raj ... Petitioner/Respondent/Petitioner

Vs.

Ajithakumari ... Respondent/Petitioner/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 25.04.2016 passed in I.A.No.122 of 2010 in D.O.P.No.33 of 2010 on the file of the learned District Judge, Kanyakumari Division at Nagercoil.

For Petitioner : Mr.G.Ramanathan

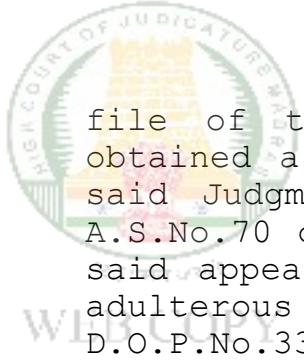
For Respondent : No appearance

ORDER

The petitioner has filed the above Civil Revision Petition against the fair and decreetal order, dated 25.04.2016 passed in I.A.No.122 of 2010 in D.O.P.No.33 of 2010 on the file of the learned District Judge, Kanyakumari.

2.The petitioner filed a petition in D.O.P.No.33 of 2010 against the respondent for divorce on the ground of adultery and desertion. The respondent filed an application in I.A.No.122 of 2010 claiming interim maintenance of Rs.5,000/- per month to the respondent and her children and Rs.5,000/- towards litigation expenses. According to the respondent, the petitioner is an ex-service man and he is getting pension of Rs.10,000/- per month and he is working as a rubber tapper in a private rubber estate and earning a sum of Rs.500/- per day and in all, he is getting Rs.25,000/- per month. The petitioner is spending lavishly without maintaining the respondent and her children.

3.The petitioner filed counter-affidavit and he denied the averments made by the respondent and submitted that the petitioner is getting only Rs.3,000/- per month as pension and he is not working in rubber estate and he is working only as a coolie. The respondent is having a shop and earning a sum of Rs.1,000/- per day. The respondent has already filed a suit in O.S.No.331 of 2008 on the



file of the learned Principal District Munsif, Kuzhithurai and obtained a Judgment in her favour for maintenance and against the said Judgment and Decree, the petitioner preferred an appeal in A.S.No.70 of 2010 on the file of the Sub Court, Kulithurai and the said appeal was dismissed. He deserted the respondent due to her adulterous life with one Babu, who is the second respondent in D.O.P.No.33 of 2010, and she had taken the child from the old school without informing the petitioner. The respondent has means to maintain herself and only to harass the petitioner, she has come out with the present petition.

4.The learned Judge considering the averments made in the affidavit and counter-affidavit and all the materials available on record allowed the application directing the petitioner to pay a sum of Rs.2,500/- per month as interim alimony from the date of filing of the petition and Rs.5,000/- towards litigation expenses. Against the said order, the present Civil Revision Petition has been filed.

5.The learned counsel appearing for the petitioner submitted that the respondent is living in adulterous life with co-respondent. The respondent is not entitled to get any maintenance from the petitioner. The respondent has already obtained an order of permanent maintenance in O.S.No.331 of 2008 on the file of the learned Principal District Munsif, Kuzhithurai. The learned Judge failed to consider the same and erroneously allowed the application directing the petitioner to pay maintenance from the date of filing of D.O.P.No.33 of 2010. The learned Judge did not consider the contention of the petitioner that he is getting only Rs.3,000/- per month as pension and working as a coolie. The respondent is running a shop and earning a sum of Rs.1,000/- per day.

6.Heard the learned counsel for the petitioner. Though notice has been served on the respondent and her name has been printed in the cause-list, none appeared for the respondent either in person or through counsel.

7. From the materials available on record, it is seen that the respondent has not denied that she had already filed a suit in O.S.No.331 of 2008 on the file of the learned Principal District Munsif, Kuzhithurai, and obtained decree for permanent maintenance. The learned Judge has not considered the contention of the petitioner that he is getting only Rs.3,000/- per month and he is working as a coolie and the respondent is not entitled to interim maintenance from the date of filing of D.O.P.No.33 of 2010. The learned Judge failed to consider the contention of the learned counsel for the petitioner that the respondent is having independent income to maintain herself. The learned Judge has ordered maintenance on the ground that it is the duty of the petitioner to maintain his wife without considering the various contentions raised by the petitioner, especially, the Judgment in O.S.No.331 of 2008 and A.S.No.70 of 2010. But failure of the learned Judge to consider these aspects



amounts to irregularity in passing the impugned order and the same is liable to be set aside.

8. In the result, the order passed in D.O.P.No.33 of 2010 on the file of the learned District Judge, Nagercoil is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

SD/-

ASSISTANT REGISTRAR(AE)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The District Judge,
Kanyakumari District at Nagercoil.

+1 cc to Mr. G.RAMANATHAN, ADVOCATE, SR NO.6057

PS

MAS/MR:20.02.2017:3P/3C

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