



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.188 of 2016 (PD)
and
C.M.P(MD)No.833 of 2016

Palaniyappan

...Petitioner/Respondent/
Appellant/Petitioner

Vs.

Mahalakshmi

... Respondent/Petitioner/
Respondent/Respondent

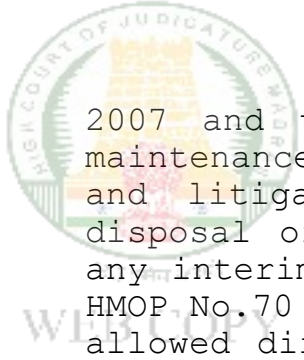
PRAYER: Civil Revision Petition is filed, under Section 115 of Civil Procedure Code, to set aside the Ex-Order and Fair Order, dated 30.10.2015 passed by the Learned Additional District Court, Ramanathapuram in I.A.No.28/2014 in H.M.C.M.A.No.02 of 2013 against H.M.O.P.No. 33 of 2007 on the file of the Subordinate Judge, Ramanathapuram and to allow the Civil Revision Petition.

For Petitioner : Mr. V.Nagenthran
For Respondent : Mr. V.Sitharanjandas

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Ex-Order and Fair Order, dated 30.10.2015 passed by the Learned Additional District Court, Ramanathapuram in I.A.No.28/2014 in H.M.C.M.A.No.02 of 2013 against H.M.O.P.No. 33 of 2007 on the file of the Subordinate Judge, Ramanathapuram.

2.The petitioner/husband is the respondent in I.A.No.28 of 2014 and petitioner filed H.M.O.P.No.33 of 2007 before the Sub Court, Devakottai, for divorce. Respondent/wife filed H.M.O.P.No.70 of 2007 for restitution of conjugal rights. Joint trial was held. H.M.O.P.No.70 of 2007 filed by the wife/respondent was allowed and HMOP.No.33 of 2007 filed by the petitioner, for divorce, was dismissed. The respondent filed I.A.No.57 of 2007 in HMOP No.33 of 2007 for interim maintenance of Rs.15,000/- and petitioner was directed to pay a sum of Rs.9,000/- per month as interim maintenance and Rs.15,000/- towards litigation expenses. Against that order of interim maintenance, the petitioner filed C.R.P.(PD)(MD)No.1503 of



2007 and this Court by the order, dated 05.11.2007 reduced the maintenance to Rs.6,000/- from Rs.9,000/- with effect from 5.11.2007 and litigation expenses as Rs.10,000/- from Rs.15,000/-. After disposal of the H.M.O.P.No.33 of 2007, the petitioner did not pay any interim maintenance. The respondent filed I.A.No.132 of 2008 in HMOP.No.70 of 2007 for interim maintenance and the said petition was allowed directing the petitioner to pay Rs.10,000/- per month. The petitioner paid interim maintenance till January 2013 and thereafter, did not pay any amounts. Against the order of dismissal of HMOP.No.33 of 2007, the petitioner filed HMCMA No.2 of 2013. The respondent filed I.A.No.28 of 2013 in HMCMA No.2 of 2013 for interim maintenance for herself and for her child from April, 2013 till the disposal of the appeal.

3.According to the respondent, the petitioner did not pay any interim maintenance for February and March 2013. The petitioner was examined as R.W.1 and marked two documents as Ex.R1 and Ex.R2. Ex.P1 was marked through him. The petitioner contended that he resigned his job and he is jobless from 17.01.2011. Therefore, he is not in a position to pay any maintenance to the respondent.

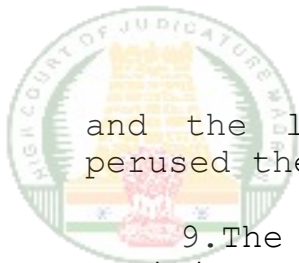
4.The learned Judge considering the averments in the affidavit and evidence of the petitioner and documents filed by him directed the petitioner to pay maintenance to the respondent Rs.10,000/- per month, from April, 2013 on or before 6th day of every English Calender month till the disposal of the appeal. The learned Judge dismissed the claim of the respondent for the other claim of the respondent for the month of February and March, 2013.

5.Against the said order, the petitioner has filed the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the learned Judge failed to see that the petitioner resigned his job on 17.01.2011 and he is jobless from that date onwards. The learned Judge failed to consider the Ex.R1 Bank statement and Ex.R2 service register filed by the petitioner in proper perspective. The learned Judge ordered payment of maintenance of Rs.10,000/- without there being any oral and documentary evidence to show the capacity and the income of the petitioner to pay Rs.10,000/- per month. Therefore, prayed for allowing the Civil Revision Petition.

7.The learned counsel for the respondent submitted that the petitioner is an Engineering Graduate and even after resigning his job on 17.01.2011 he paid maintenance till January 2013. Being an engineering graduate he can get a job. Bank Statement Ex.R1 relied on by the petitioner was rightly rejected by the learned Judge and given valid reason for directing the petitioner to pay the maintenance from April 2013. The learned counsel for the respondent also submitted that till December 2016, Rs.4,50,000/- is arrears.

8.I have heard the learned counsel appearing for the petitioner



and the learned counsel appearing for the respondent and also perused the entire materials on record.

9. The petitioner is the husband of the respondent. The petitioner filed H.M.O.P.No.33 of 2007 for divorce. The respondent filed HMOP No.70 of 2007 for restitution of conjugal rights. After joint trial by common judgment and decree, HMOP No.33 of 2007 filed by the petitioner was dismissed and HMOP 70 of 2007 filed by the respondent/wife was allowed.

10. Against the said judgment dismissing the HMOP No.33 of 2007, the petitioner filed HMCMA No.2 of 2013 on the file of the Additional District Court, Ramanathapuram. It is not disputed when HMOPs are pending on the application filed by the respondent for interim maintenance of Rs.9,000/- was given to her and to the minor child and litigation expenses of Rs.15,000/-. Subsequently, the same was reduced. After paying maintenance for sometime, the petitioner did not pay maintenance to the respondent. The respondent filed I.A.No.132 of 2008 in HMOP No.70 of 2007 and trial Court ordered maintenance of Rs.10,000/- per month. The respondent paid maintenance till January 2013 and subsequently, did not pay any maintenance. In the appeal in HMCMA No.2 of 2013 respondent filed I.A.No.28 of 2014 for interim maintenance. By the order dated, 13.10.2015, interim maintenance of Rs.10,000/- was ordered to the respondent and her minor child. The contention of the petitioner that he is jobless from 17.01.2011 and there is no capacity to pay the maintenance was considered by the learned Judge and was rejected by giving cogent and valid reason. The petitioner claims that he resigned his job on 17.1.2011 and from that date onwards, he is jobless and no capacity to pay maintenance. On the other hand, till January 2013 he paid the maintenance. It is not in dispute that the petitioner is an Engineering Graduate and therefore, the reason given by the learned Judge that being an Engineering Graduate the petitioner is capable of earning income and paying maintenance to the respondent is valid and legal. It is pertinent to note that the petitioner resigned his job on 17.1.2011, but he paid maintenance till January 2013. Considering all the averments, the learned Judge passed an order and there is no illegality or irregularity warranting interference by this Court.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar



1.The Additional District Judge,
Ramanathapuram

2.The Subordinate Judge,
Ramanathapuram.

+ 1 CC TO Mr.V.NAGENDRAN, ADVOCATE IN SR No. 1865

+ 1 CC TO Mr.V.SITHARANJA DAS, ADVOCATE IN SR No. 1885

AM

TE/MR-VB : 07/02/2017 : 4P/5C

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and
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