



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2526 of 2016 (NPD)

and

C.M.P. (MD) No.11915 of 2016

Nagajothi ... Petitioner / Respondent / Petitioner

Vs

Chinnapandi ... Respondent / Petitioner / Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to call for the records pertaining to the Fair and Decreetal Order dated 26.08.2016 made in I.A.No.66 of 2014 in H.M.O.P.No.111 of 2014 on the file of the Principal Subordinate Court, Dindigul and set aside the same by allowing the above Civil Revision Petition.

For Petitioner : Mr. J. Lawrance

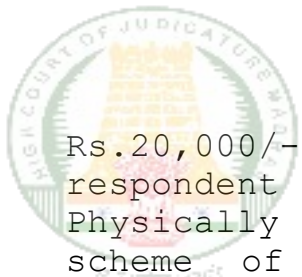
For Respondent : Mr. A. Hariharan

ORDER

The petitioner has filed this Civil Revision Petition to call for the records pertaining to the Fair and Decreetal Order, dated 26.08.2016 made in I.A.No.66 of 2014 in H.M.O.P.No.111 of 2014 passed by the learned Principal Sub Judge, Dindigul and set aside the same.

2.The petitioner/wife filed H.M.O.P.No.111 of 2014 before the Principal Sub Court, Dindigul, for divorce. The respondent/husband filed I.A.No.66 of 2014 for interim maintenance of Rs.10,000/- per month and Rs.25,000/- towards litigation expenses. According to the respondent, the petitioner is working in Tamil Nadu Electricity Board and she is earning Rs.22,000/- per month and getting Rs.20,000/- from finance business. The respondent while giving training to the petitioner's sister's husband to drive auto, met with an accident and lost his entire mobility of his both legs and spent Rs.2,00,000/- for medical expenses. Due to accident, he became physically disabled person and not able to do any work and depending on his father. The petitioner did not look after the respondent and neglected him. Therefore, he has come out with the present petition.

3.The petitioner filed counter affidavit and denied all the averments that petitioner is getting Rs.22,000/- and getting



Rs.20,000/- from finance business. On the other hand, the respondent is getting Rs.1,000/- from Government Physically Disabled Pension Scheme and he is working 100 days scheme of MGNREGS (Mahatma Gandhi National Rural Employment Guarantee Scheme). He is driving auto during night hours and earning Rs.10,000/-. The respondent also did not surrender the Auto licence. The father of the respondent retired from Railway as Gang Man.

4.Before the learned Judge, the respondent examined himself as P.W.1 and marked two documents. The petitioner examined herself as R.W.1 and three other persons as R.W.2 to R.W.4 and marked five documents.

5.The learned Judge considering all the materials on record, averments made in the affidavit and counter affidavit, oral and documentary evidence passed an order awarding a sum of Rs.5,000/- as interim maintenance per month to the respondent and directed the petitioner to pay a sum of Rs.4,000/- to the respondent after deducting Rs.1,000/- from maintenance amount of Rs.5,000/- from the date of filing of petition and granted a sum of Rs.5,000/- towards litigation expenses.

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

7.The learned counsel appearing for the petitioner reiterated the averments made in the revision petition. The learned counsel for the petitioner submitted that the respondent is driving Auto during night hours and is getting Rs.10,000/- per month and also working in 100 days scheme MGNREGS scheme and is having sufficient income for maintaining himself and he is having capacity in maintaining himself.

8.The learned counsel for the respondent submitted that the respondent has proved by evidence before the learned Judge that he is physically incapacitated due to the accident and he is not getting any income except which he received as physical disabled pension. The respondent also proved that the petitioner is working in Tamil Nadu Electricity Board and she is getting decent salary and failed to look after the respondent. The amount of interim maintenance ordered is not excessive. In support of his case, the learned counsel for the respondent relied on the judgment **(2003) 10 Supreme Court Cases 228 (Amarjit Kaur vs.Harbhajan Singh and another)** wherein in paragraph 8 it has been held as follows:-

"8.Section 24 of the Hindu Marriage Act, 1955 empowers the Court in any proceeding under the Act, if it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the



proceeding and having regard to also the income of both the petitioner and the respondent....."

9.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.

10.The respondent has proved by evidence that he is physically incapacitated and he is not having any income except receiving Rs.1,000/- from the Government as disabled pension. The respondent also proved that he is depending on his father. The petitioner alleged that the respondent is driving auto and he is earning huge income and he is also working in MGNREGS (Mahatma Gandhi National Rural Employment Guarantee Scheme). The petitioner has not produced any evidence to substantiate her claim. The petitioner admitted that she is working in Tamil Nadu Electricity Board and she is getting Rs.20,922/- gross income and her carry home salary is Rs.14,770/-. It is not the case of the petitioner that she is maintaining the respondent, who is physically incapacitated. The learned Judge considered all these facts in proper perspective and exercised his jurisdiction properly. The Judgment relied on by the learned counsel for the respondent squarely applies to the facts of the present case. In the circumstances, 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

To

The Principal Sub Judge,
Dindigul.

Copy to

The Section Officer, V.R.Section,
Madurai Bench of Madras high Court, Madurai.

+1 cc to M/R.J.LAWRENCE, Advocate, SR.NO:7991
+1 cc to M/R.A.HARIHARAN, Advocate, SR.NO:7733

AM

SVA/BS/16.03.2017/3P/5C

<https://hcservices.ecourts.gov.in/hcservices/>