

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5016 of 2016

ORDER:

1) The present Civil Revision Petition is filed under Article 227 of Constitution of India by the petitioner-plaintiff aggrieved by an order, dated 16.06.2016 passed in I.A.No.42 of 2015 in I.A.No.34 of 2014 in O.P.No.6 of 2010 on the file of the Senior Civil Judge, Punganur, wherein an application filed under Order IX, Rule 9 and Section 151 of C.P.C. to restore the I.A.No.34 of 2014 was allowed on a condition to pay the entire balance of maintenance amount due to the respondent-defendant by the petitioner-plaintiff on or before 23-06-2016.

2) A perusal of the material placed on record would show that the petitioner-plaintiff herein filed O.P.No.6 of 2010 for divorce. On 27-04-2014, the case was posted for enquiry on the petitioner's side. On that day, the counsel for the petitioner was out of station and the petitioner also could not attend before the Court. Due to non-representation, I.A.No.34 of 2014 was dismissed for default on the same day. During the pendency of O.P., the defendant-respondent herein filed I.A.No.13 of 2010 for grant of interim maintenance. After contest, I.A.No.13 of 2010 was allowed directing payment of interim maintenance at the rate of

Rs.2,000/- per month. The said order was not challenged and has become final. When the petitioner-plaintiff failed to comply with the said order, the respondent-defendant filed I.A.No.140 of 2011 for dismissal of O.P. for non-compliance of the order passed by the Court. The said I.A. was contested by filing counter. But, however, the petitioner remained absent for several adjournments and ultimately an ex parte order was passed in the said I.A. As a result, the petitioner-plaintiff filed I.A.No.146 of 2011 under Order IX, Rule 9 of C.P.C. to restore the main O.P. and the same was allowed on 22-02-2012 with a condition that the petitioner-plaintiff shall deposit the entire arrears of maintenance amount due within 15 days from the date of said order, failing which, it is directed that the said petition stands dismissed. As the petitioner-plaintiff failed to comply with the said order, I.A.No.146 of 2011 came to be dismissed. The petitioner filed another petition in I.A.No.34 of 2014 to restore the I.A.No.146 of 2011 along with another petition in I.A.No.35 of 2012 to condone the delay in filing the petition to restore the I.A.No.146 of 2011 which was dismissed on 27-04-2015. The petitioner again came up with the present petition i.e., I.A.No.42 of 2015 to restore the petition in I.A.No.34 of 2014. By an order, dated 16-06-2016 the trial Court allowed the I.A. with a condition that the petitioner shall pay the entire

balance amount due to the respondent-defendant on or before 23-06-2016, failing which, the Court held that, the petition becomes infructuous. Challenging the same, the present revision came to be filed.

3) Admittedly, the petitioner-plaintiff has not complied with the order passed by the trial Court. It is also not in dispute that I.A. came to be dismissed due to his absence. Subsequently, the impugned order came to be passed directing the petitioner to pay the entire arrears within a particular period of time.

4) On 23-12-2016, the learned counsel for the petitioner handed over the demand draft bearing No.777401 for an amount of Rs.50,000/-, dated 06-12-2016 drawn in favour of the respondent in H.M.O.P.No.6 of 2010 and further gave an undertaking that he would pay the balance amount of Rs.50,000/- within two weeks. Today, the learned counsel for the petitioner handed over the demand draft bearing No.065536 for an amount of Rs.6,000/-, dated 20-12-2017 drawn in favour of the respondent in H.M.O.P.No.6 of 2010; demand draft bearing No.065523 for an amount of Rs.14,000/-, dated 02-12-2017 drawn in favour of the respondent in H.M.O.P.No.6 of 2010; demand draft bearing No.065513 for an amount of Rs.30,000/-, dated 20-12-2016 drawn in favour of the respondent in H.M.O.P.No.6 of 2010.

The counsel for the respondent-defendant submits that the entire arrears are paid.

5) Having regard to the above and as the entire arrears are paid, Civil Revision Petition is allowed restoring the I.A.No.42 of 2015 on the file of the Senior Civil Judge at Punganur. No costs.

6) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.01.2017
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