

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2018

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

CrI.O.P.No.496 of 2018 &
CrI.M.P.No.5949 of 2018

Somasekaran

..Petitioner

Vs.

1.Minor Sriranjini rep. by
Next Friend and Mother, Soniya

2.Soniya

...Respondents

PRAYER: Criminal Original Petition is filed under Section 397 and 401 of the Code of Criminal Procedure to call for the records in CMP.No.13 of 2018 in M.C.No.97 of 2017 dated 07.03.2018 on the file of the Family Court, Dharmapuri and to set aside the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.S.C.Vishwanth

For Respondents : Mr.K.Murugesan

O R D E R

This revision petition has been filed against the order dated 07.03.2018 in CMP.No.13 of 2018 in M.C.No.97 of 2017 passed by the Family Court, Dharmapuri.

2.The petitioner is the husband of the second respondent and father of the first respondent. Initially, the second respondent filed a petition under Section 125 of the Code of Criminal Procedure in M.C.No.97 of 2017 on the file of the Family Court, Dharmapuri, on behalf of her minor daughter and herself, seeking maintenance.

3. Due to hospitalisation of the second respondent, she was unable to appear before the Court below on 20.12.2017 and thereby, the M.C.No.97 of 2017 was dismissed for default. Thereafter, the respondents filed C.M.P.No.13 of 2018 before the Court below under Order IX Rule 11 of C.P.C., seeking to restore the maintenance petition which was dismissed for default on 20.12.2017. After hearing the submissions on either side, the Court below allowed the restoration petition on 07.03.2018. As against the order dated 07.03.2018, passed by the Court below, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the petition in CMP No.13 of 2018, itself is not maintainable before the Court below as the minor had sworn the affidavit on behalf of her mother.

5. Mr.K.Murugesan, the learned counsel for the respondent would submit that initially the M.C.No. 97 of 2017 was dismissed for default on 20.12.2017 for non-appearance of the second respondent. However, the restoration petition was filed by the second respondent on behalf of the first respondent. The second respondent is the mother of the minor girl/1st respondent. In that petition, the second respondent signed and sworn the affidavit on behalf of the minor daughter, however, inadvertently in the first paragraph in CMP.No.13 of 2018, it was shown as if the minor represented on behalf of her mother and on perusal of the petition, the second respondent signed representing her minor daughter.

6. I have perused the petition and sworn affidavit of the mother in which inadvertently it was shown as if the minor sworn the affidavit on behalf of the second respondent. It is only a curable defect. Therefore, the Court below rightly allowed the restoration petition and Maintenance Case was taken on file. Hence, no prejudice would be caused by allowing the petition and an opportunity has to be given to the respondents to establish their case in the Maintenance Case before the Court below.

7. In view of the above, there is no infirmity or illegality in the order of the Court below and accordingly this petition is dismissed. Considering the facts and circumstances of the case, the Court below is directed to dispose of the M.C.No.97 of 2017 on the file of the District Family Court, Dharmapuri, within a period of one month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(Co)

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ub Assistant Registrar

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To

1. The Judge,
Dharmapuri.

+1cc to Mr.S.C.VISWANATH , Advocate SR.No. 63366

+1cc to Mr.K.MURUGESAN , Advocate SR.No. 63528

CrI.R.C.No.496 of 2018 &

CrI.M.P.No.5949 of 2018

ASK(28/09/2018)