

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1153 of 2014

P.Sathya Priya

.. Petitioner

Vs.

S.T.S.Prasad

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.11.2013 made in I.A.No.46 of 2011 in H.M.O.P.No.196 of 2009 on the file of the Subordinate Court, Poonamallee.

For Petitioner : Mr.P.Satheesh Kumar

for Mr.Adrian D.Rozario

For Respondent : Mrs.Geeta Ramaseshan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 05.11.2013 made in I.A.No.46 of 2011 in

H.M.O.P.No.196 of 2009 on the file of the Subordinate Court, Poonamallee.

2. The petitioner is wife and respondent is husband. The respondent filed H.M.O.P.No.196 of 2009 on the file of the Subordinate Court, Poonamallee, for divorce. In the said H.M.O.P., petitioner filed I.A.No.46 of 2011 claiming interim maintenance of Rs.50,000/- per month for maintenance of two children and a sum of Rs.30,000/- towards litigation expenses. According to the petitioner, the respondent is employed in Infosys, Bangalore and is earning Rs.1,00,000/- per month. In addition to that, he is owning 30 Acres of land. The respondent is not maintaining the petitioner and two children. The petitioner has also stated that she filed H.M.O.P.No.105 of 2007 on the file of the Subordinate Court, Poonamallee, for restitution of conjugal rights. Both the petitioner and respondent purchased a land at Horamagu, Bangalore, in the year 2003 in their joint names and subsequently, it was sold by the respondent and the said amount was taken only by the respondent. The respondent has never taken care of his children and he is not maintaining them and he has never contributed any amount for their educational expenses.

3. The respondent filed counter affidavit and contended that due to the attitude of the petitioner and her family members, he was depressed and lost his job. He is not owning 30 Acres of agricultural land as alleged by the petitioner. A plot was purchased in the joint name of petitioner and respondent by obtaining loan from IDBI Bank in the year 2004. The petitioner refused to contribute monthly E.M.I. and refused to sign the required forms from the bank. Subsequently, an agreement was entered into between the petitioner and respondent. The petitioner agreed to release the property in February 2007 after accepting the cash payment in the presence of her father. Her maternal uncle has signed as a witness in the release deed. The petitioner has obtained house loan along with her 68 year old mother as second applicant and has constructed a house in the year 2007. Only after construction of house, petitioner filed cancellation of the release deed signed by her in May 2008 in Bangalore, to harass the respondent. According to the respondent, petitioner is highly qualified and she is working in M/S.Scope International Limited, Chennai and is earning a sum of Rs.90,000/- per month. Therefore, she is not entitled for any maintenance. The interim maintenance

claimed for Rs.50,000/- for two children are exorbitant and prayed for dismissal of the application.

4. Before the learned Judge, no oral evidence was let in by both the petitioner and respondent. The petitioner marked 29 receipts as Exs.P1 to P29. The respondent marked original partition deed entered into between the respondent's family members dated 30.11.2010 as Ex.R1.

5. The learned Judge considering the averments made in the affidavit and counter affidavit, directed the respondent to pay a sum of Rs.10,000/- per month as interim maintenance to the petitioner and her two children from the date of petition i.e., 12.07.2011 and also directed the respondent to pay a sum of Rs.5,000/- towards litigation expenses.

6. Against the said order dated 05.11.2013 made in I.A.No.46 of 2011 in H.M.O.P.No.196 of 2009, the present Civil Revision Petition is filed by the petitioner/wife.

7. In addition to the averments made in the affidavit filed in support of the application for interim maintenance and objections, the learned counsel for the petitioner contended that the respondent has not produced any document to show his income and he has not filed income tax return. According to the petitioner, the respondent is the Proprietor of Shivram Ventures established in the year 2009, which deals with the export of ornamental fishes and aquatic plants and thereby, he is earning a sum of Rs.3,00,000/- per month.

8. The learned counsel for the respondent denied all the averments made by the petitioner, reiterated the averments made in the counter filed in the present application and Civil Revision Petition and contended that the petitioner has not denied even before this Court that she is working in M/S.Scope International Limited, Chennai and is earning a sum of Rs.90,000/- per month. Therefore, the petitioner is not entitled to any interim maintenance. The learned counsel for the respondent has also submitted that the petitioner is not allowing the respondent to visit the minor children. The petitioner has not furnished any details with regard to the education of the children and the school, in which they are studying. The petitioner as a mother of minors is also equally responsible for

their maintenance and maintenance already ordered by the learned Judge is more than sufficient and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

10. From the materials available on record, it is seen that the petitioner and respondent have made various averments with regard to income of each other, but have not produced any document to substantiate the same. The petitioner has prayed for maintenance only for the minor children. The learned Judge without considering the fact, ordered maintenance to the petitioner as well as to the children.

11. It is not in dispute that minor children are studying in a school. Both the petitioner and respondent must share the expenses for the maintenance of minor children. Considering all the materials on record in entirety, the order of the learned Judge is set aside and modified directing the respondent to pay a sum of Rs.7,500/- each to the minor children for their maintenance from the date of filing of

the application till 28.02.2018 and further directing the respondent to pay a sum of Rs.10,000/- each to the minor children from today onwards i.e., 01.03.2018, including expenses for education and extracurricular activities of the children, if any. A sum of Rs.5,000/- awarded by the learned Judge towards litigation expenses is confirmed. The learned counsel for the petitioner and respondent submitted that both H.M.O.P.Nos.196 of 2009 and 105 of 2007 are pending on the file of the Subordinate Court, Poonamallee and therefore, a joint trial may be ordered for the disposal of both H.M.O.Ps. and they also sought for early disposal of the H.M.O.Ps. Considering the said submission, the learned Judge is directed to dispose of both the H.M.O.P.Nos.196 of 2009 and 105 of 2007 at the earliest on day-to-day basis and in any event not later than three months from the date of receipt of a copy of this order.

12. With the above direction, the Civil Revision Petition is partly allowed. No costs.

01.03.2018

Index:Yes/No

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V.M.VELUMANI,J.

Kj

To
The Subordinate Judge, Poonamallee.



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