

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1320 of 2013

and

M.P.No.1 of 2013

V.Shankar

... Petitioner

-Vs-

Vijaya

... Respondent

PRAYER: Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code, to call for entire records relating to Crl.M.P.No.282 of 2008 in M.C.No.47 of 2006 on the file of the Family Court, Pondicherry and set aside the order dated 06.05.2013.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : No Appearance

O R D E R

This Criminal Revision case is filed to call for entire records relating to Crl.M.P.No.282 of 2008 in M.C.No.47 of 2006 on the file of the Family Court, Pondicherry and set aside the order dated 06.05.2013.

2.The revision petitioner is the husband and the respondent is the wife. The respondent filed the petition under Section125(3) of Cr.P.C., before the Family Court, Pondicherry, in Cr.M.P.No.282/2008 in M.C.No.47/2006 claiming arrears from the petitioner. The Magistrate has passed an order for levying the amount of Rs.1,58,350/- towards the arrears of maintenance to be paid by the respondent therein by issuing a warrant under Form No.44 prescribed under Cr.P.C., authorising the District Collector, Villupuram. That order was challenged by way of revision before this Court.

3.The learned counsel for the petitioner would submit that, the respondent is a post graduate and working as a Teacher in Anbalaya Higher Secondary School, Gowri Educational Society, registered by the Government of Pondicherry, at 11th Main Road,

Shanthi Nagar, Puducherry, and earning sufficiently to look after her needs, whereas the revision petitioner is an uneducated, unemployed and remain without any regular source of income or means to meet out his day to day needs and the expenses and he is under the support of the families of his brother and sister for his food and shelter. Further he also sustained accidental head injury due to fall in the well and he is taking regular treatment in Jipmer Hospital at Pondicherry for the purpose of his instability and imbalance in his physical health and thus he cannot have regular employment or income for his livelihood on his own.

4. Though notice was duly served on the respondent, there is no representation on behalf of the respondent either in person or through her counsel. Heard the learned counsel for the petitioner and perused the records.

5. It is not in dispute that the petitioner filed a petition against the respondent before the Principal Sub Judge, Villupuram for restitution of conjugal rights and an ex-parte order was passed, she has not challenged the order passed by the Sub Judge in HMOP No. 58/2003. Then, she filed a petition for dissolution of marriage before Family Court, Pondicherry in MOP No. 61/2006. Subsequently, the said petition was dismissed as not pressed. Thereafter, she filed the petition for maintenance in M.C.No. 47/2006 on the file of Family Court, Pondicherry. In the said case the Family Court ordered, directing the husband/respondent to pay a sum of Rs. 3,000/- per month on or before 5th of every English calendar month and to pay the arrears from the date of filing of the petition.

6. The petitioner/husband has not taken the stand of unemployment before the Family Court. However, the revision petitioner initially obtained the ex-parte order before the Family Court and the same was not challenged. Therefore, now he cannot re-agitate the similar issue before the revisional Court. Further, the learned counsel for the petitioner would submit that the property mentioned in the orders does not stand in the name of the revision petitioner, he is only a co sharer and therefore, he is having only 7/24 shares in the entire property no action can be taken against the said property. Since, the petitioner himself admitted that he has got 7/24 shares in properties, it is for the Revenue Authority to workout the remedy to take steps to realise amount from the above said property. Though he has stated that the respondent/wife is employed, the same was not proved by producing oral and documentary evidence before the Family Court. Therefore, the petitioner was not able to prove the employment status of the respondent/wife through valid documentary proof. In the absence of one such documentary evidence, the petitioner/husband is duty

bound to maintain his wife. If at all the respondent/wife is employed subsequent to date of the impugned order and having sufficient means, it is for the petitioner to file the proper petition before the Family Court seeking modification. He has not filed any such petition so far.

7. Accordingly, the revision is dismissed. Consequently, connected miscellaneous petition is closed.

AT

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

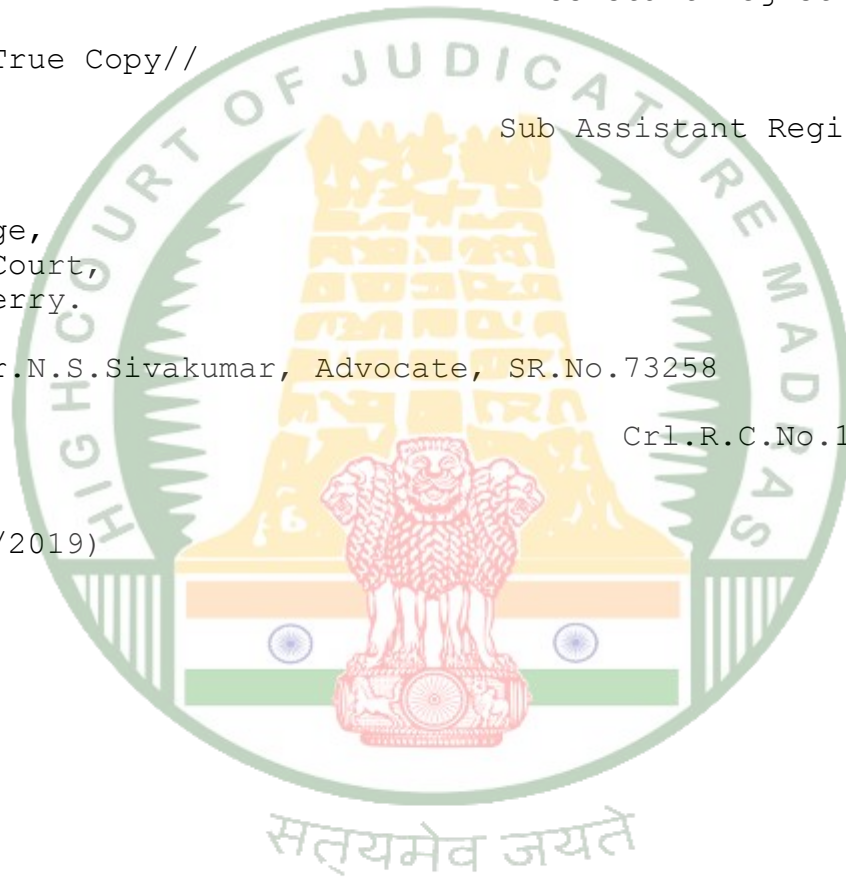
To

1. The Judge,
Family Court,
Pondicherry.

+1cc to Mr.N.S.Sivakumar, Advocate, SR.No.73258

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Kak (21/08/2019)



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