

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.1706 of 2015
and M.P.No.1 of 2015

K.Kuppusamy

.. Petitioner

Vs.

Kalaiselvi

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.07.2014 made in I.A.No.256 of 2012 in H.M.O.P.No.104 of 2008 on the file of the Subordinate Court, Pollachi.

For Petitioner : Mr.N.Nandhakumar

For Respondent : Mr.C.Veeraraghavan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 31.07.2014 made in I.A.No.256 of 2012 in

H.M.O.P.No.104 of 2008 on the file of the Subordinate Court, Pollachi.

2. The petitioner is husband and respondent is wife. The petitioner filed H.M.O.P.No.104 of 2008 on the file of the Subordinate Court, Pollachi, against the respondent for divorce. The respondent filed I.A.No.256 of 2012 for interim maintenance claiming a sum of Rs.10,000/- for herself, Rs.10,000/- for one of the minor children and a sum of Rs.30,000/- towards litigation expenses. According to the respondent, petitioner is doing business in the name and style of "Karpagam Medicals" and also doing agricultural activities and is earning a sum of Rs.50,000/- per month. The petitioner did not come and take the respondent after delivery of the second child. The petitioner has not paid any amount for maintenance of respondent and second child. The respondent has to travel 300 kilometres to contest the said H.M.O.P. filed by the petitioner.

3. The petitioner filed counter affidavit and denied all the averments that he is carrying on business and is earning Rs.50,000/- per month. He is living on the income of his father and prayed for dismissal of the application.

4. Before the learned Judge, the respondent examined herself as P.W.1 and petitioner was examined as R.W.1. Both the petitioner and respondent did not mark any documents.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and evidence of the petitioner and respondent, directed the petitioner to pay a sum of Rs.3,000/- per month to each of the minor children.

6. Against the said order dated 31.07.2014 made in I.A.No.256 of 2012 in H.M.O.P.No.104 of 2008, the present Civil Revision Petition is filed by the petitioner/husband.

7. The learned counsel for the petitioner contended that elder son of the petitioner is with the petitioner, he is maintaining his son and the learned Judge has failed to consider this fact. The respondent claimed maintenance only for one of the sons and without considering this fact, the learned Judge ordered compensation for both the children. Further, the learned Judge failed to consider that the respondent has not proved that the petitioner is doing business in the name and style of "Karpagam Medicals" and

also doing agricultural activities and is earning a sum of Rs.50,000/- per month.

8. The learned counsel for the respondent contended that the first son is under the care and custody of the petitioner and the respondent is taking care of the second son. He further contended that the petitioner is the only son of his family. The petitioner is earning a sum of Rs.50,000/- by doing business and agricultural activities. The petitioner is not maintaining the respondent and second child. Therefore, she filed application for interim maintenance. The learned Judge has ordered a sum of Rs.3,000/- each towards maintenance of the two children.

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 respondent has stated that the petitioner is carrying on business in the name and style of "Karpagam Medicals" and doing agricultural activities. In the counter affidavit filed by the petitioner, he has denied all the averments made by the respondent. The learned

Judge took note of the fact that the petitioner in the main H.M.O.P.No.104 of 2008 has stated that he is carrying on business in the name and style of "Karpagam Medicals", ordered in the earlier portion of the impugned order that the respondent is entitled to Rs.3,000/- per month as interim maintenance and Rs.1,500/- towards minor son. On the other hand, in the conclusion portion of the order, the learned Judge has held that both the minor children are entitled to each Rs.3,000/- per month as interim maintenance. This is a mistake committed by the learned Judge, which petitioner cannot take advantage of this.

11. Considering all the materials on record, I modify the impugned order of the learned Judge directing the petitioner to pay a sum of Rs.3,000/- to the respondent and Rs.2,000/- to the second minor son towards interim maintenance. The petitioner has admitted in the H.M.O.P. that he is carrying on business in the name and style of "Karpagam Medicals". But in the counter affidavit filed in the present application, the petitioner has denied the same with an intention not to pay any maintenance to the respondent and minor son. It is an admitted fact that the respondent is wife of the petitioner and minor son is their child. The duty of the petitioner is

to maintain his wife and minor son. The petitioner has not alleged and proved that the respondent is earning any independent income to maintain herself and minor son.

12. In view of the same, the Civil Revision Petition is disposed of with above modification. As the H.M.O.P. is of the year 2008, the learned Judge is directed to dispose of H.M.O.P.No.104 of 2008 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. No costs. Consequently, connected Miscellaneous Petition is closed.

01.03.2018

Index:Yes/No

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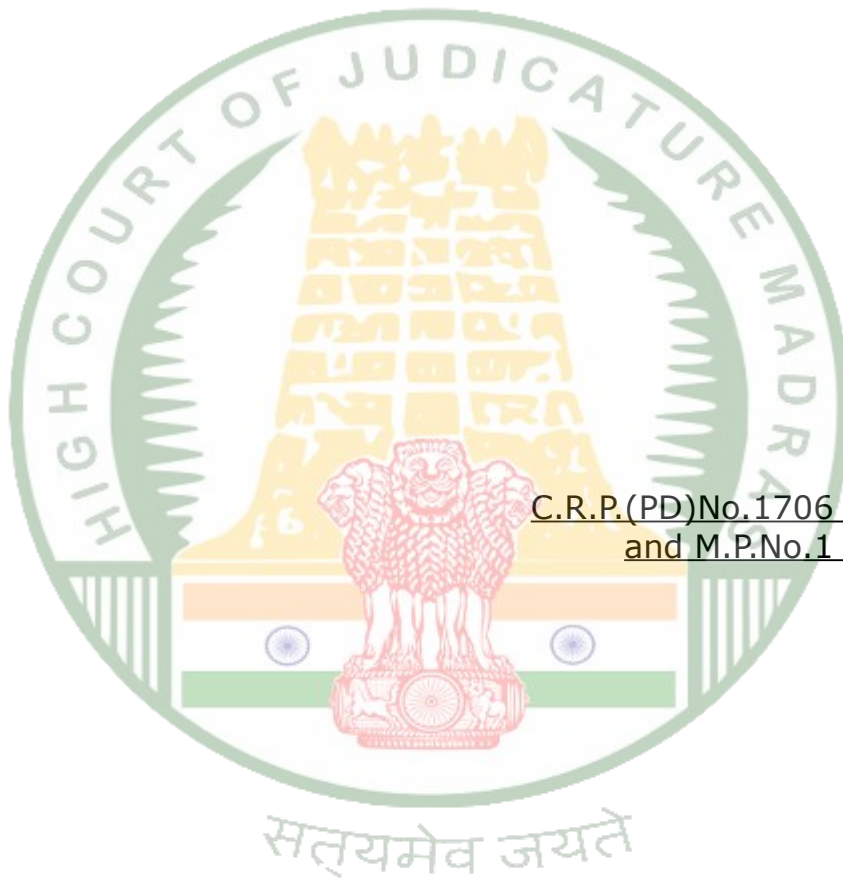
To

The Subordinate Judge, Pollachi.

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V.M.VELUMANI,J.

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