

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANIC.R.P.(PD)Nos.605 & 606 of 2015

Orders reserved on 22.01.2018	Orders pronounced on 30.01.2017
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V.Kalpana

.. Petitioner in both
C.R.Ps.

Vs.

P.Senthil Kumar

.. Respondent in both
C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 12.06.2014 made in I.A.Nos.115 & 116 of 2013 in H.M.O.P.No.45 of 2008 on the file of the Sub-Court, Tambram.

For Petitioner : Mr.R.Asokan

For Respondent : Mr.K.Pandurangan

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decretal orders dated 12.06.2014 made in I.A.Nos.115 & 116 of 2013 in H.M.O.P.No.45 of 2008 on the file of the Sub-Court, Tambram.

2.The issues and the parties involved in both the Civil Revision Petitions are one and the same. Therefore, disposed of by this common order.

3.The petitioner is wife and respondent is the husband. The respondent husband filed H.M.O.P.No.45 of 2008 on the file of the Sub-Court Tambaram, for divorce on the ground of cruelty. The petitioner filed counter statement in the month of April 2009 and contested the petition. The petitioner filed three applications under Section 24 of Hindu Marriage and Maintenance Act viz., I.A.Nos.115 and 116 of 2009 for a direction to the respondent to pay a sum of Rs.50,000/- per month for the petitioner's maintenance and another Rs.50,000/- per month for petitioner's infant son's maintenance from September 2003 to till the date of disposal of the above petition and also for a direction to pay a sum of Rs.25,000/- towards litigation expenses and I.A.No.117 of 2009 is filed to direct the respondent to hand over the minor son Sharath's passport to the petitioner. According to the petitioner, the respondent is working in United States of America as a consultant in many firms and is earning Rs.4,00,000/- per month. He has deserted the petitioner and her minor son and has not paid any

money towards maintenance. The respondent also cancelled the return tickets to United States of America of the petitioner and her minor son. The petitioner is not having any independent income and is depending upon her parents for maintenance of herself and her minor son. She claims a sum of Rs.50,000/- to each of the petitioner and her minor son towards maintenance and Rs.25,000/- towards litigation expenses. Only after lodging police complaint, the petitioner was able to retrieve her educational certificate and passport from the custody of the respondent's father, who is now acting as an agent on behalf of the respondent. She also made various allegations against respondent's parents.

4.The respondent filed common counter affidavit denying all the allegations made against him and his parents by the petitioner in the counter statement filed in support of the above H.M.O.P.No.45 of 2008. According to the respondent, the petitioner is a qualified Architect and is employed. Her father is carrying on construction business and petitioner has filed these applications for maintenance and permanent alimony only for the enhancement of the business of her father and not for maintaining the minor son. The respondent has also stated that petitioner was suffering from tuberculosis for a very long time and was

not taking treatment properly and often threatened to commit suicide. The respondent contends that he did not cancel the return tickets to United States of America and the same is still available unused. With the ulterior motive to harass and humiliate the respondent and his parents, the petitioner filed complaint dated 15.12.2005 with the police for return of all the jewels. The objective of the petitioner's claim for maintenance is only to assist her father's construction business and not for maintaining her minor son as she is not taking care of him and the child is only under the care of the petitioner's relatives. These applications are filed only as a counter blast to the above said H.M.O.P filed by the respondent and to blackmail him and prayed for dismissal of these applications.

5. Before the learned Judge, the father of the respondent was examined as P.W.1 and marked 13 documents as Exs.P1 to P13. On the side of the respondent, petitioner was examined as R.W.1 and her mother and father were examined as R.Ws.2 and 3 respectively. No document was marked on behalf of the petitioner.

6. The learned Judge considering the pleadings, oral and documentary evidence let in by the parties, allowed the H.M.O.P filed

by the respondent and granted decree of divorce. As far as the applications filed by the petitioners are concerned, the learned Judge allowed the application I.A.No.117 of 2013 filed for a direction to the respondent to return the passport of the minor son. As far as I.A.No.115 of 2013 is concerned, the respondent is directed to pay a sum of Rs.10,000/- per month to the petitioner towards future monthly maintenance from the date of order till her lifetime or on the date of any 2nd marriage solemnized by her and also to pay a sum of Rs.10,000/- per month to the son of the petitioner towards future monthly maintenance from the date of order to till he attains majority on or before 5th of every month. As far as I.A.No.116 of 2013, the respondent is directed to pay the arrears of the monthly maintenance of a sum of Rs.10,000/- per month each to the petitioner and her minor son towards interim maintenance from 03.04.2009 to till the date of order within a period of two months.

7. Not being satisfied with the above fair and decretal order dated 12.06.2014 made in I.A.Nos.115 & 116 of 2013 in H.M.O.P.No.45 of 2008, the present two Civil Revision Petitions are filed by the petitioner.

8.The learned counsel for the petitioner contended that the learned Judge failed to note the fact that petitioner and her minor son were deserted as early as in the year 2003 and they were not provided basic needs for the past 10 years. The learned Judge without asking for evidences to prove the allegations made against the petitioner, granted divorce solely relying upon the evidence of the P.W.1, who is incompetent to give evidence on behalf of his son/respondent regarding the cruelty and mental agony. The main contention of the learned counsel for the petitioner is that respondent did not deny the statement of the petitioner that respondent is earning Rs.4 lakhs per month and he failed to produce his salary certificate to prove that claim of petitioner is not correct. The petitioner is not having any independent income and the sum of Rs.10,000/- awarded to each of the petitioner and her minor son is too meagre as the same will not be sufficient enough to maintain her minor son properly. The learned counsel for the petitioner in support of his contention, relied on the judgments reported in:

(i)2005 (3) CHN 534 (Sushil Mondal Vs. Shibdas patra @ Shibu)

(ii)Order dated 04.11.2006 made in C.R.P(PD).No.1505 and 1506 of 2006 (M.S.Mani Vs. K.Shyamala)

(iii)Order dated 14.09.2015 made in Crl.R.C.(MD).No.470 of 2013 (Arul Selvi and another Vs. Sathish Kumar)

9.The learned counsel for the respondent reiterated the averments made in the counter affidavit and averments in the petition filed in H.M.O.P and contended that when the respondent refused to invest his earnings in the petitioner's father's construction, dispute has arisen between the petitioner and respondent. The learned counsel for the respondent also contended that the petitioner is a qualified Architect and she is employed and is earning regular income. He further contended that the amount claimed by the petitioner towards maintenance is only to assist the petitioner's father in his construction company which is not financially doing well.

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

11.From the materials on record, it is seen that the petitioner has not produced any materials or evidences to substantiate her contention that respondent is earning Rs.4 lakhs per month. At the same time, it is to be noted that the respondent has not denied that he is earning Rs.4 lakhs per month and has not produced any evidence to show his actual monthly income. It is pertinent to note that petitioner

has not denied that she is a qualified Architect and is employed under her father in his construction business. It is an admitted fact that both the petitioner and respondent are living separately from 2003 onwards. The respondent has filed petition for divorce in the year 2008. The petitioner has filed applications for maintenance as early as in the year 2009, while the same were numbered only in the year 2013. The learned counsel for the petitioner has not given any reason as to why the applications were kept unnumbered from the year 2009. The learned Judge considered all the above facts and granted monthly maintenance of Rs.10,000/- to each of the petitioner and her minor son. The learned Judge has also ordered a sum of Rs.10,000/- per month each to the petitioner and her minor son towards interim maintenance from 03.04.2009 to till the date of the order in I.A.No.116 of 2013 which was filed for permanent alimony. From the affidavit filed in the typed set of papers, it is seen that the petitioner has filed two applications for interim maintenance and permanent alimony on 3rd April 2009. From the counter statement and impugned order of the learned Judge, it is seen that the said applications are numbered only in the year 2013. The learned counsel for the respondent contended that the Civil Revision Petition is not maintainable. The said application is for permanent alimony. The

learned counsel for the petitioner seeks leave of this Court to withdraw the C.R.P.No.606 of 2015 with regard to permanent alimony and to file appeal against the said order.

12.The interim maintenance can be granted only from the date of application and not from date of filing of the H.M.O.P. In the present case, the learned Judge has granted maintenance from 03.04.2009. There is nothing on record to show that respondent has challenged that order. Considering the entire materials on record, I hold that the order of the learned Judge is proper and valid in respect of interim maintenance granted to petitioner.

13.In respect of interim maintenance granted to the minor son is concerned, the sum of Rs.10,000/- granted by the learned Judge is too meagre. It is submitted that minor son is studying in Chettinad Vidyashram. Considering the status of the respondent and his responsibility to give good education to his son, the sum of Rs.10,000/- ordered is modified and the same is enhanced to Rs.20,000/- per month. In the result, the C.R.P.No.605 of 2015 is partly allowed as mentioned above.

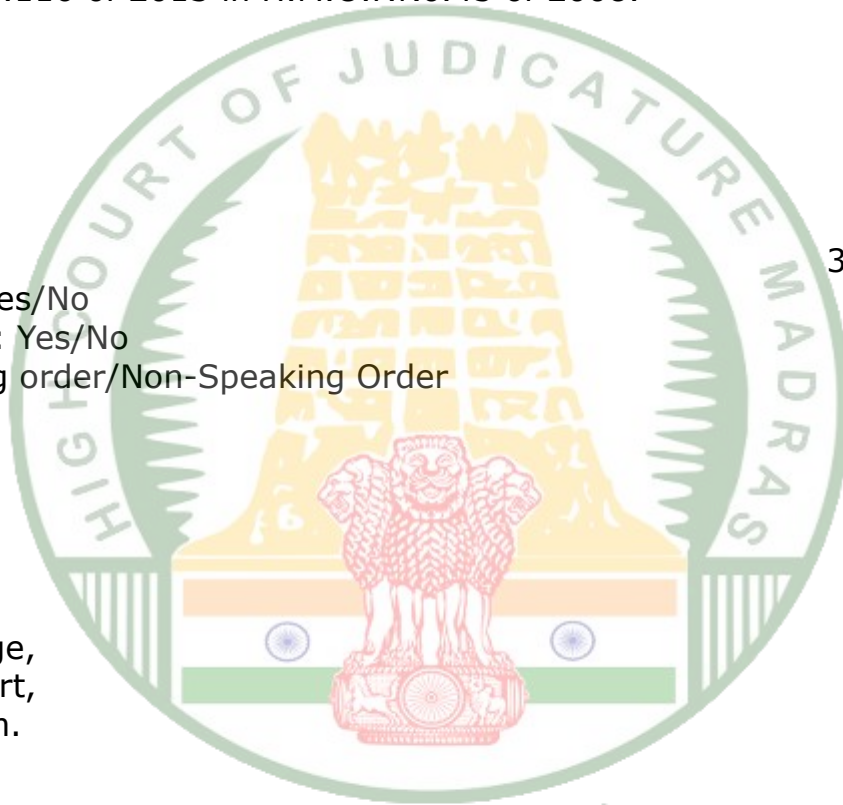
14.C.R.P.No.606 of 2015 filed challenging the order made in I.A.No.116 of 2013 is dismissed as withdrawn with liberty to the petitioner to file appeal challenging the order dated 12.06.2014 made in I.A.No.116 of 2013 in H.M.O.P.No.45 of 2008.

30.01.2018

Index: Yes/No
Internet: Yes/No
Speaking order/Non-Speaking Order
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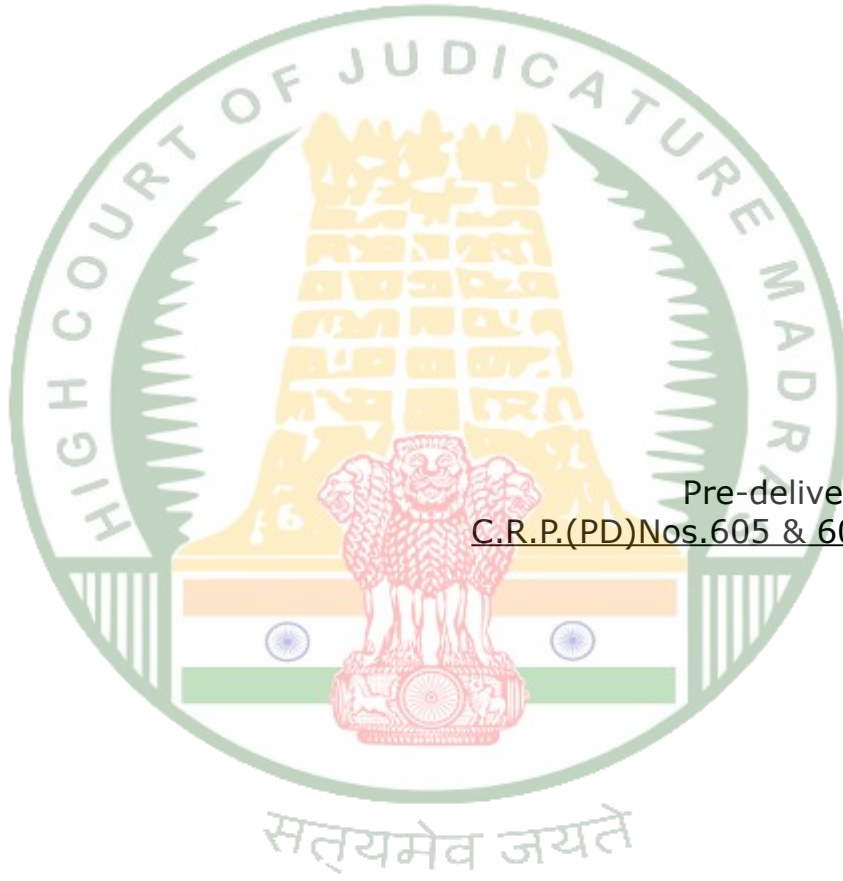
The Judge,
Sub-Court,
Tambaram.



Note: The Registry is directed to return the original order passed in I.A.No.116 of 2013 in H.M.O.P.No.45 of 2008 forthwith.

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V.M.VELUMANI,J.
gsa



Pre-delivery order in
C.R.P.(PD)Nos.605 & 606 of 2015

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