

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.1388 of 2012

P.Varadarajan

.. Petitioner

Vs.

1.V.Maheswari

2.V.Sneha

.. Respondents

(Minor Rep. by V.Maheswari,
mother and natural guardian)

Prayer: Criminal Original Petition filed under Section 397 read with 401 of Cr.P.C., against the order passed by the I Additional Principal Judge, Family Court, Chennai dated 17.07.2012 in M.P.No.315 of 2010 in M.C.No.211 of 2002 directing the Petitioner herein to pay enhanced maintenance from Rs.750/- to Rs.6,000/- to the 1st respondent and Rs.750/- to Rs.5,000/- to the 2nd respondent with effect from 08.04.2010.

For Petitioner : Mr.Ramalingam
for M/s.Sudha Ramalingam

For Respondents : No Appearance

O R D E R

This criminal revision petition is preferred by the petitioner /respondent against the order passed by the learned I Additional Principal Judge, Family Court, Chennai directing the petitioner herein to pay enhanced maintenance from Rs.750/- to Rs.6,000/- to the 1st respondent and Rs.750/- to Rs.5,000/- to the 2nd respondent in M.P.No.315 of 2010 in M.C.No.211 of 2002 dated 17.7.2012.

2.Brief case of the petitioner/respondent is that:

The facts of the case is that the 1st respondent wife and her minor children filed a maintenance petition in M.C.No.211 of 2002 before the I Additional Family Court and the same was allowed after hearing the parties on 18.9.2003 and the lower

Court directed the petitioner/respondent to pay a sum of Rs750/- to each respondents. For the past 5 years the petitioner/respondent have not paid the maintenance and she hopes that the respondent will come and rejoin with her. For the past 5 years she suffered a lot even for food with her daughter and it is difficult for the respondents to sustain her livelihood. Now the cost of living is too high she has to maintain her daughter's school expenses and other miscellaneous expenses it is very difficult the earlier maintenance order passed on 18.03.2003. Therefore the petition for enhancement of maintenance from Rs.750/- to Rs.7000/- to the 1st respondent / 1st petitioner and from Rs.750/- to Rs.10,000/- to the 2nd respondent/ 2nd petitioner. The petitioner is working as Floor Assistant in Doordharsan Kendra Chennai and since he is drawing the salary Rs.35,000/- per month. Hence this petition is filed.

3.During the trial, petitioner herself examined as PW1 and exhibit P1 was marked. The respondent himself examined as RW1 and no documents were marked.

4.On completion of the trial, the learned 1st Additional Principal Judge, Family Court, Chennai directing the petitioner herein to pay enhanced maintenance.

5.Aggrieved over the same, the petitioner filed this criminal revision.

6.The learned counsel for the petitioner submits that the family Court has altered and enhanced the maintenance to Rs.6,000/- from Rs.750/- to the I Petitioner and Rs.5,000/- to the II Petitioner. The amount enhanced is severe and excessive and not in proportion to the earnings and other liabilities and responsibilities of the petitioner. The learned counsel for the petitioner submits that the family Court failed to note that the petitioner and the respondent are living separately by mutual consent from 2004. The petitioner filed O.P.No.1893 of 2004 for divorce and the 1st respondent filed petitions for the recovery of the arrears of maintenance and enhancement of maintenance in M.P.Nos.1363 and 1364 of 2005. A compromise was arrived at the instance of the relatives and friends of both the parties and thereby the parties did not prosecute the case and consequentially the petitions were dismissed for default. The petitioner was taking care of the girl child by paying her tuition fees and other necessary expenses. The parties mutually agreed to live separately by themselves and continue to be so.

7.The learned counsel for the petitioner submits that the family Court failed to see that the 1st respondent is a graduate and earning sufficiently besides her earnings from LIC Agency. When she filed a petition for enhancement of maintenance, she was working as an accountant in a ladies hostel at Perambur. In fact, the respondent earns more than the petitioner. She is living in her own house on the other hand the petitioner is living in a rented house.

8.I heard Mr.Ramalingam for M/s.Sudha Ramalingam, learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondents.

9.On careful perusal of the rival submissions, it is admitted that the petitioner have not obeyed the order passed by the learned trial Court in M.C.No. 211 of 2002 for the past 5 years and had not paid the maintenance. Ex.P1 salary slip of the petitioner which shows after the deduction of Rs.6076/- he is getting net pay of Rs.28,771/- . His gross pay is shown as Rs.34,847/- Therefore, the learned trial Court rightly directed the petitioner/respondent to pay the maintenance.

10.There is no representation for the respondents continuously on 01.03.2018 and 02.03.2018 even today there is no representation for the respondents.

11.In the result:

(a) this Criminal Revision is partly allowed;

(b) the order of the learned 1st Additional Principal Judge, Family Court, Chennai in M.P.No.315 of 2010 in M.C.No.211 of 2002 dated 17.07.2012 is modified that the petitioner is directed to pay a sum of Rs.5,000/- to the first respondent and Rs.6,000/- to the second respondent, totally Rs.11,000/- from the date of order (i.e.) on 17.07.2012;

(c) the petitioner is also directed to pay interim maintenance amount on or before 5th of every calendar month without fail and also directed to pay the arrears of the amount of maintenance immediately.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

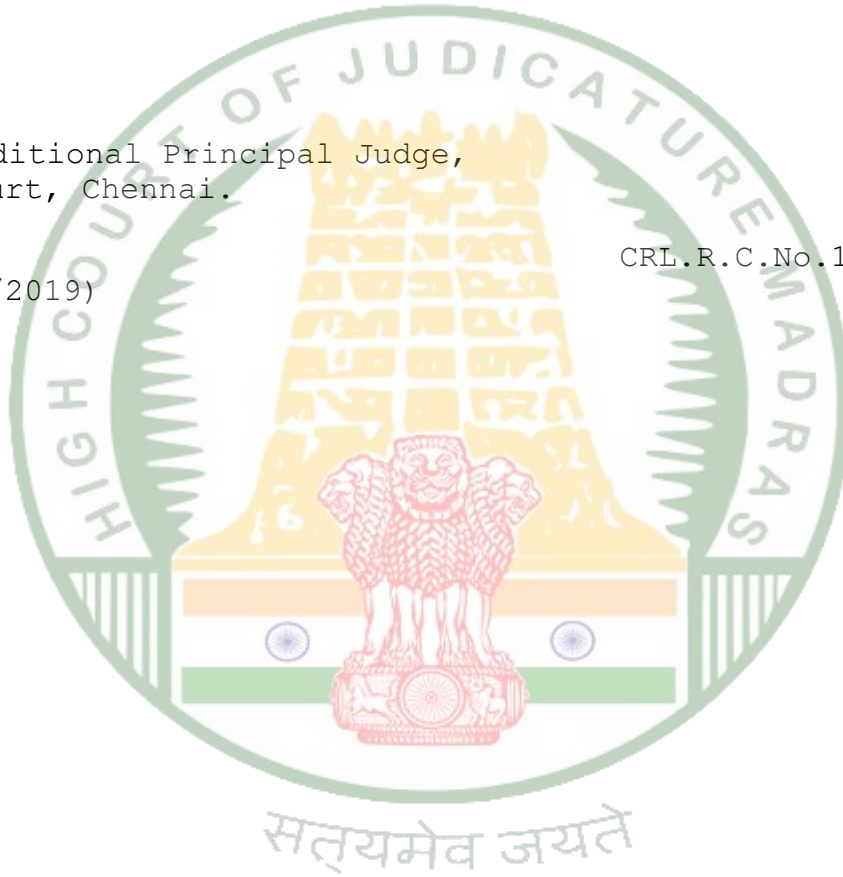
vs

To

The 1st Additional Principal Judge,
Family Court, Chennai.

SSM(05/03/2019)

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