

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Civil Revision Petition (PD) No.2184 of 2007

Kalyani

.. Petitioner

Vs.

Ilangovan

.. Respondent

Revision filed under Article 227 of Constitution of India against the fair and decretal order 29.09.2004 dated in I.A.No.48 of 2003 in H.M.O.P.No.71 of 2000 on the file of the Sub-Court, Namakkal.

For Petitioner : Mr.G.Vasudevan

For Respondent : Mr.R.Neelakandan

ORDER

This revision is directed against the order of the Subordinate Judge, Namakkal dated 29.09.2004 in I.A.No.48 of 2003 in H.M.O.P.No.71 of 2000, dismissing the petition filed by the petitioner under Section 25 of the Hindu Marriage Act, seeking maintenance of Rs.1000/- per month.

2. Relevant facts for disposal of this revision could briefly be

stated thus:

Marriage between the petitioner and the respondent was solemnized on 14.09.1984. Due to differences between the petitioner and the respondent, they separated. The petitioner filed H.M.O.P.No.71 of 2002 for divorce and the same was ordered on 28.09.2002. Petitioner filed I.A.No.48 of 2003 seeking maintenance of a sum of Rs.1000/- per month alleging that the respondent is bound to maintain the petitioner and in order to survive and to pay rent to the house, she needs money. Therefore, she filed the petition seeking maintenance of Rs.1000/-. According to the petitioner, the respondent owns landed property, wherefrom, he is getting Rs.30,000/- as income. It is stated that the respondent has means to pay the maintenance amount and prays for charge over the petition mentioned property.

3. Resisting the petition, the respondent filed the counter stating that already the petitioner has filed a civil suit being O.S.No.207 of 1996 before the learned District Munsif Court, Musri, wherein the learned District Munsif directed the respondent to pay Rs.300/- to the petitioner towards maintenance. It is stated that the petitioner was living in the respondent house and therefore, the

question of payment of rent by the petitioner would not arise. In the counter, it is stated that in order to realise the maintenance amount awarded by the learned District Munsif, Musri, the petitioner has filed execution petition and in the execution petition, the respondent has paid certain amounts. According to the respondent, the petitioner is working as Noon Meal Organiser in Erumapatti Union and drawing salary of Rs.1,300/- per month and she can maintain herself. The present petition seeking maintenance is not maintainable and prays for dismissal of the petition.

4. Before the learned Subordinate Judge, the petitioner examined herself as P.W.1 and one Mahamuni was examined as P.W.2. Exs.P1 to P4 were marked. On the side of the respondent, the respondent examined himself as R.W.1 and one Krishnamurthy was examined as R.W.1. Ex.R1 was marked.

5. Upon consideration of the oral and documentary evidence, the learned Subordinate Judge dismissed the petition. Aggrieved by the same, the petitioner has preferred the present revision.

6. I heard Mr.G.Vasudevan, learned counsel appearing for the

petitioner and Mr.R.Neelakandan, learned counsel appearing for the respondent. I have also perused the materials available on record.

7. The learned counsel for the petitioner submitted that the learned Subordinate Judge erred in dismissing the petition for creating charge over the property owned by the respondent in respect of the maintenance already granted by the learned Judge. He submitted that the learned Subordinate Judge failed to note that by creating the charge over the property, the maintenance granted in favour of the petitioner can be safeguarded. The learned counsel argued that the trial Court ought to have granted maintenance of Rs.1000/- per month with charge over the property mentioned in the petition.

8. The learned counsel for the respondent submitted that the trial Court was right in dismissing the petition on the ground that for the same relief the petitioner has earlier filed civil suit, wherein maintenance was granted. He argued that if the petitioner wants enhancement of the maintenance or modification, she should file petition in the said suit and not a separate petition in the disposed HMOP.

9. On a perusal of the pleadings produced by both sides, I find that H.M.O.P.No.71 of 2002, filed by the petitioner for dissolution of marriage was allowed on 28.09.2002 and after dissolution of the marriage, the petitioner was living separately in the house owned by the respondent, which fact was admitted by the petitioner in her examination. Therefore, it is clear that question of payment of rent alleged by the petitioner does not arise.

10. It is pertinent to note that earlier, the petitioner has filed O.S.No.207 of 1996 before the learned District Munsif Court, Musri for maintenance and the learned District Munsif, Musri ordered maintenance of Rs.300/- payable by the respondent to the petitioner. Since the respondent failed to pay maintenance as ordered by the Court, she filed execution petition and in the execution petition, the respondent paid certain amount, which fact was not disputed by the petitioner.

11. The main grievance of the petitioner is that in order to maintain herself and to pay the rent for house, the respondent should pay a sum of Rs.1000/- as maintenance and she has also sought a charge over the petition mentioned properties.

12. In her evidence, the petitioner admitted that she was working as Noon Meal Organiser and earning a sum of Rs.878/- per month. She also stated that considering the age, health condition and the income she is getting from salary, the respondent may be directed to pay Rs.1000/- per month as maintenance. The said evidence was recorded way back in 2003 and definitely, now the petitioner will get more amount.

13. Upon analysing the oral and documentary evidence available on record, I find that the prayer of the petitioner cannot be granted on the ground that the petitioner has already filed O.S.No.207 of 1996 for maintenance, wherein the learned District Munsif, Musri directed the respondent to pay Rs.300/- per month towards maintenance. If really, the petitioner is aggrieved by the said quantum awarded, she ought to have filed an appeal or if she wants enhancement of the quantum, she should file petition before the said Court for enhancement of maintenance. As observed by the trial Court, for the same relief, two petitions cannot be maintained.

14. On a perusal of the affidavit filed in support of I.A.No.48 of

2003, I find that the said petition was affirmed in June, 2002, when main HMOP was pending. The trial Court ought to have decided the petition seeking maintenance first. The learned Subordinate Judge, Namakkal was right in saying that since already maintenance suit was pending before the learned District Munsif Court, Musri, the petitioner has to approach the said Court for modification and/or enhancement of maintenance. Therefore, I find that there is no valid ground to interfere with the order of the learned Subordinate Judge, Namakkal and the revision is liable to be dismissed.

15. In the result, the Civil Revision Petition is dismissed. No costs. However, if the petitioner wants to file petition seeking enhancement of the maintenance and/or modification of the maintenance as ordered in O.S.No.207 of 1996 pending on the file of the learned District Munsif Court, Musri, she can very well file a petition and the learned District Munsif, Musri, will decide the petition on merits and in accordance with law. No costs.

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Index : Yes/No

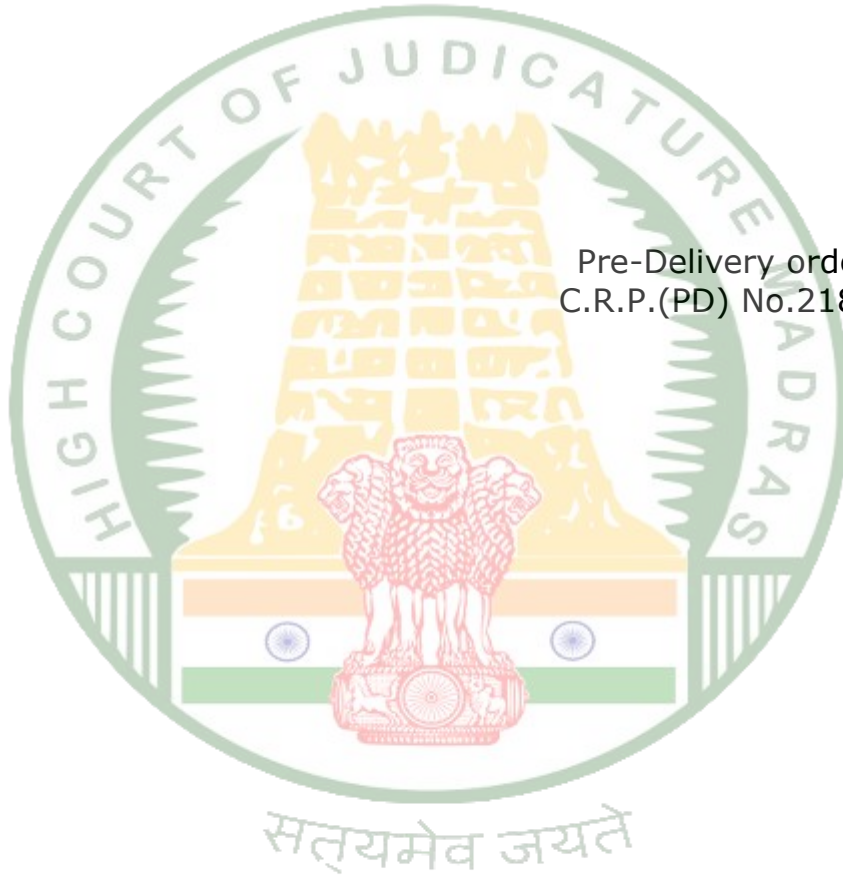
Internet : Yes/No

To

The Subordinate Judge, Namakkal.

M.V.MURALIDARAN,J.

VS



Pre-Delivery order made in
C.R.P.(PD) No.2184 of 2007

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