

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4255 of 2010
and M.P.No.1 of 2010

M.Sakthivel

.. Petitioner

Vs.

1.Dhanalakshmi

2.Minor.Pradeepa
Represented by her mother and
natural guardian next friend
Dhanalakshmi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.08.2010 made in I.A.No.43 of 2009 in H.M.O.P.No.41 of 2009 on the file of the Subordinate Court, Ranipet.

For Petitioner

: Mr.B.Gopalakrishnan

For R1
R2

: No appearance
: Minor represented by R1

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 13.08.2010 made in I.A.No.43 of 2009 in H.M.O.P.No.41 of 2009 on the file of the Subordinate Court, Ranipet.

2.The petitioner is husband, first respondent is wife and second respondent is their minor daughter. The petitioner filed H.M.O.P.No.41 of 2009 for divorce on the file of the Subordinate Court, Ranipet. The respondents filed I.A.No.43 of 2009 under Section 24 of the Hindu Marriage Act, for a direction to the petitioner to pay a sum of Rs.3,000/- to the first respondent and Rs.2,000/- to the second respondent/minor daughter towards monthly interim maintenance and a sum of Rs.5,000/- towards litigation expenses.

3.According to the first respondent, the petitioner is running a rice mill and is earning a sum of Rs.20,000/- per month and he is having immovable properties. The first respondent is not employed and she is an illiterate person. The first respondent is not having any independent income to maintain herself and her minor

daughter. The second respondent/minor daughter is going to school. The first respondent further contended that the petitioner tried to pour kerosene over her body and kill her. After taking treatment in the hospital, she was forced to live in her parents house along with her minor daughter and her parents are also very poor. Therefore, she prayed for interim maintenance.

4. The petitioner filed counter affidavit and denied that he is owner of the rice mill. The petitioner contended that he is only working as a coolie and is earning meagre income. The first respondent alone has left the matrimonial home on her own volition. She gave a false complaint against the petitioner and his family members. The petitioner and his family members were arrested. The first respondent is not entitled to any maintenance and the petitioner has no capacity to pay the maintenance amount to the respondents and prayed for dismissal of the application.

5. Before the learned Judge, both the petitioner and respondents have not marked any document to prove their contentions.

6.The learned Judge considering the averments made in the affidavit, counter affidavit and marriage invitation of the petitioner and first respondent, wherein the petitioner's father was shown as owner of Srivenkateshwara Rice Mill, Kalavai Chennasamudram, fixed the income of the petitioner as Rs.15,000/- and directed the petitioner to pay a sum of Rs.3,000/- to the first respondent and a sum of Rs.2,000/- to the second respondent/minor daughter towards monthly interim maintenance and a sum of Rs.2,500/- towards litigation expenses.

7.Against the said order dated 13.07.2010 made in I.A.No.43 of 2009 in H.M.O.P.No.41 of 2009, the present Civil Revision Petition is filed by the petitioner/husband.

8.The learned counsel for the petitioner submitted that the learned Judge has erred in holding that the petitioner is owner of the rice mill. On the other hand, he is only working as a coolie and is earning only meagre income. The first respondent has not proved that the second respondent/minor daughter is going to school. The petitioner is willing to maintain her minor daughter and interim

maintenance fixed by the trial Court is exorbitant and prayed for allowing the Civil Revision Petition.

9. Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the first respondent and her name is printed in the cause list, there is no representation on behalf of the first respondent either in person or through counsel.

10. The first respondent has alleged that the petitioner is owner of the rice mill and is earning Rs.20,000/- per month. From the marriage invitation produced before the trial Court, it is seen that the petitioner's father is owning rice mill. The petitioner has stated that he is working as a coolie. But the petitioner has not stated whether he is working as coolie in the rice mill owned by his father or elsewhere. The first respondent has stated that her minor daughter is studying in first standard. At the time of filing the petition, the petitioner has not produced any contra evidence to dispute the same except stating that the first respondent did not produce any document to prove that the second respondent/minor

daughter is going to school. At the time of argument in the Civil Revision Petition, the learned counsel for the petitioner has stated that the petitioner is willing to maintain the second respondent/minor daughter, but the maintenance amount fixed by the trial Court is exorbitant.

11.The learned Judge considering the status of the petitioner, fixed notional income of the petitioner as Rs.15,000/- and directed the petitioner to pay a sum of Rs.3,000/- to the first respondent and Rs.2,000/- to the second respondent/minor daughter, towards monthly interim maintenance. The learned Judge has failed to consider that the petitioner is not owner of the rice mill and fixed the notional income at Rs.15,000/-. In view of the failure on the part of the learned Judge, the sum of Rs.3,000/- per month awarded to the first respondent towards interim maintenance is modified as Rs.2,000/- per month and the sum of Rs.2,000/- awarded to the second respondent/minor daughter and a sum of Rs.2,500/- awarded as litigation expenses are hereby confirmed.

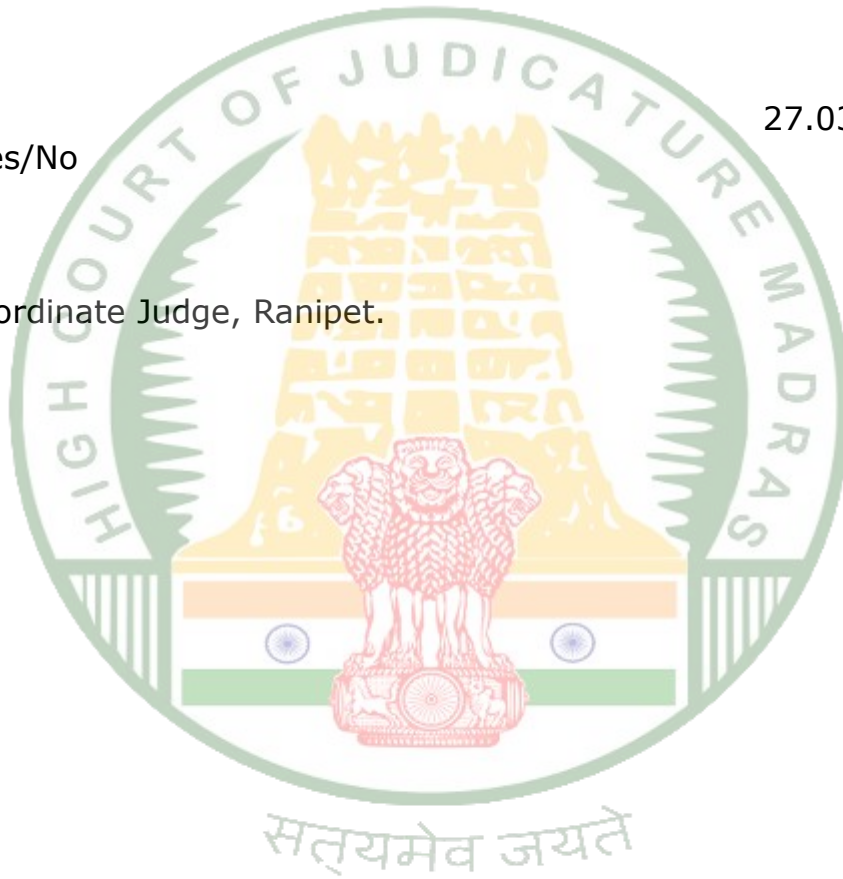
12.With the above modification, the Civil Revision Petition is partly allowed. As the H.M.O.P. is of the year 2009, the learned

Judge is directed to dispose of the H.M.O.P.No.41 of 2009 as expeditiously as possible, 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.

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Index:Yes/No
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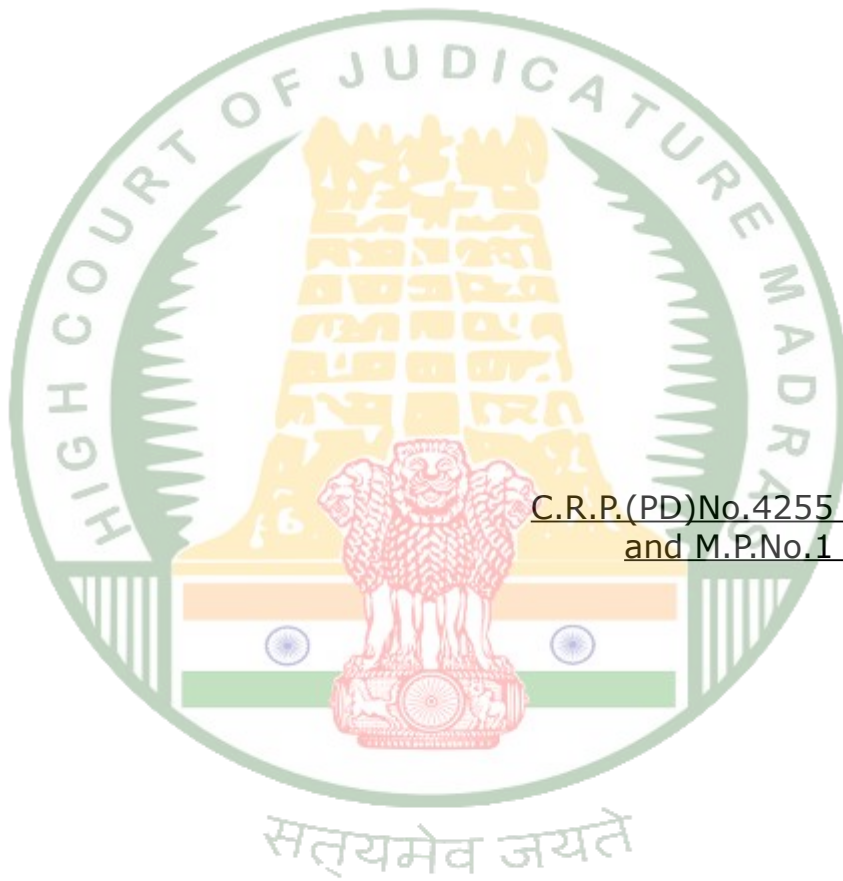
To
The Subordinate Judge, Ranipet.



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V.M.VELUMANI,J.

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