

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

C.R.P (PD) No.4509 and 4510 of 2013

&

M.P.No.1 of 2013

Indirani

.. Petitioner in
both C.R.Ps'

Vs.

R.Venkatesan

.. Respondents in
both C.R.Ps'

Civil Revision Petitions filed under Article 227 of Constitution of India against the fair and final order passed in I.A.Nos.9 and 10 of 2011 in HMOP No.52 of 2009, dated 09.10.2012 on the file of Sub-Court, Vaniyambadi, Vellore District.

For Petitioner : Mr.P.A.Sudesh Kumar
(In both C.R.Ps')

For Respondent : No Appearance
(In both C.R.Ps')

COMMON ORDER

C.R.P.No.4509 of 2013 is directed against I.A.No.9 of 2011 and C.R.P.No.4510 of 2013 is directed against I.A.No.10 of 2011.

2. These Civil Revision Petitions arise out of a matrimonial dispute. The matrimonial dispute is a divorce petition being H.M.O.P.No.52 of 2009 on the file of Sub Court, Vellore District, which shall hereinafter be referred to as 'trial Court' for the sake of convenience and clarity. The Revision petitioner before this Court i.e., Indirani, is the wife and the sole respondent before this Court i.e., Venkatesan is the husband. For the sake of convenience and clarity, revision petitioner shall hereinafter be referred to as 'wife' and the respondent shall hereinafter be referred to as 'husband'.

3. Husband filed the aforesaid H.M.O.P.No.52 of 2009 on the file of the trial Court with a prayer for divorce on the ground of cruelty.

4. Pending the petition for divorce, wife took out two interlocutory applications being I.A.Nos.9 and 10 of 2011. I.A.No.9 of 2011 with a prayer for interim maintenance and I.A.No.10 of 2011 with a prayer for litigation expenses of Rs.10,000/- (Rupees Ten Thousand only) in all. To be noted, both

the petitions, the Court is informed, have been filed under Section 24 of the Hindu Marriage Act, 1955.

5. The Court is also informed that there are two minor children out of the wedlock.

6. Under such circumstances, the aforesaid two interlocutory applications were taken out for disposal. It is seen from the order, that is sought to be revised, that evidence has been let-in in the interlocutory applications and exhibits have been marked.

7. After oral and documentary evidence, the trial Court vide order dated 09.10.2012 has dismissed wife's aforesaid two petitions for interim maintenance and litigation expenses. This order dated 09.10.2012 made by the trial Court in the aforesaid two interlocutory applications (to be noted it is a common order) sought to be revised in these petitions, which have been filed under Article 227 of the Constitution of India.

8. Husband, who is the sole respondent in the civil revision petitions has been duly served and his name has also been shown in the cause list. From the case file placed before this Court, it is seen that the husband has not chosen to enter appearance through a lawyer. Though the name of the

husband has been shown in the cause list and though his name was called out aloud thrice in the corridors outside the Court, there is no response. This Court now examines the revision petitions on merits.

9. Learned counsel for the revision petitioner Mr.P.A.Sudesh Kumar, refers to paragraph 5 of the order of the trial Court, which is sought to be revised. Vide paragraph 5, the trial Court has held that there is nothing on record to show that the husband has willfully neglected his wife and by his own volition chose to leave / live away from the wife. The trial Court has also recorded a finding that the obtaining position is that the husband and wife are living separately pursuant to a local panchayat. The trial Court has dismissed both the aforesaid applications of the wife primarily on the ground that it has not been established that there is neglect on the part of the husband. In other words, the trial Court has held that willful neglect on the part of the spouse is necessary for an application for interim maintenance and litigation expenses to be considered favourably.

10. Mr.P.A.Sudesh Kumar, learned counsel for the petitioner points out that the instant interlocutory applications are under Section 24 of the Hindu Marriage Act, 1955 and the learned counsel submits that the reasoning is completely outside the scope of Section 24 of the Hindu Marriage Act, 1955. In other words, it is the submission of the learned counsel for the revision

petitioner that under Section 24 of the Hindu Marriage Act, 1955, enquiry, if any, should be only with regard to whether the petitioner, in applications of this nature, has independent source of income or not and as to whether such income is sufficient or not. The question of willful neglect or deliberately staying away is of no avail in conclusively deciding a petition under Section 24 is his say. In view of the submission made by the learned counsel for the revision petitioner, this Court deems it appropriate to extract Section 24 of the Hindu Marriage Act, which reads as follows:

“24. Maintenance pendente lite and expenses of proceedings:- Where in any proceeding under this Act it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable:

[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

11. A perusal of the impugned order (order that is sought to be revised) and Section 24 of the Hindu Marriage Act in the light of the submission

made by the learned counsel for the revision petitioner, leads one to the inevitable conclusion that the trial Court erred in dismissing both the applications on the ground that the petitioner has not established neglect i.e., willful neglect on the part of the husband.

12. To be noted, the trial Court has also recorded a factual finding that the spouses are living separately.

13. Another factor, which has weighed in the mind of the Court that there are two minor children out of the wedlock.

14. Most importantly the averment of the wife (who is the petitioner) that she has no independent income that is sufficient for her to sustain herself and two minor children and to support necessary expenses of the proceedings, has not been dislodged in any manner. To be noted, this is the paramount essential ingredient necessary for a prayer under Section 24 of the Hindu Marriage Act, 1955 to be acceded to.

15. In the light of the narrative supra, this Court has no difficulty in coming to the conclusion that the impugned common order of the trial Court deserves to be interfered with. I do so.

16. Owing to all that have been set out supra, the impugned common

order, being contrary to the grounds on which a petition under Section 24 has to be tested, is set aside. These civil revision petitions are allowed.

17. Though obvious, it is made clear that this is not an ex parte order and that this is an order on merits after examining all aspects of the matter.

18. In the light of the peculiar facts and circumstances of this case, there shall be a direction to the trial Court to dispose of H.M.O.P.No.52 of 2009 as expeditiously as possible and in any event, within six months from the date of receipt of a copy of this order. These Civil Revision Petitions are allowed. Considering the nature of the matter, this Court refrains from imposing costs. Consequently, connected miscellaneous petition is closed.

02.07.2018

Index : Yes/No

Internet : Yes/No

vsm

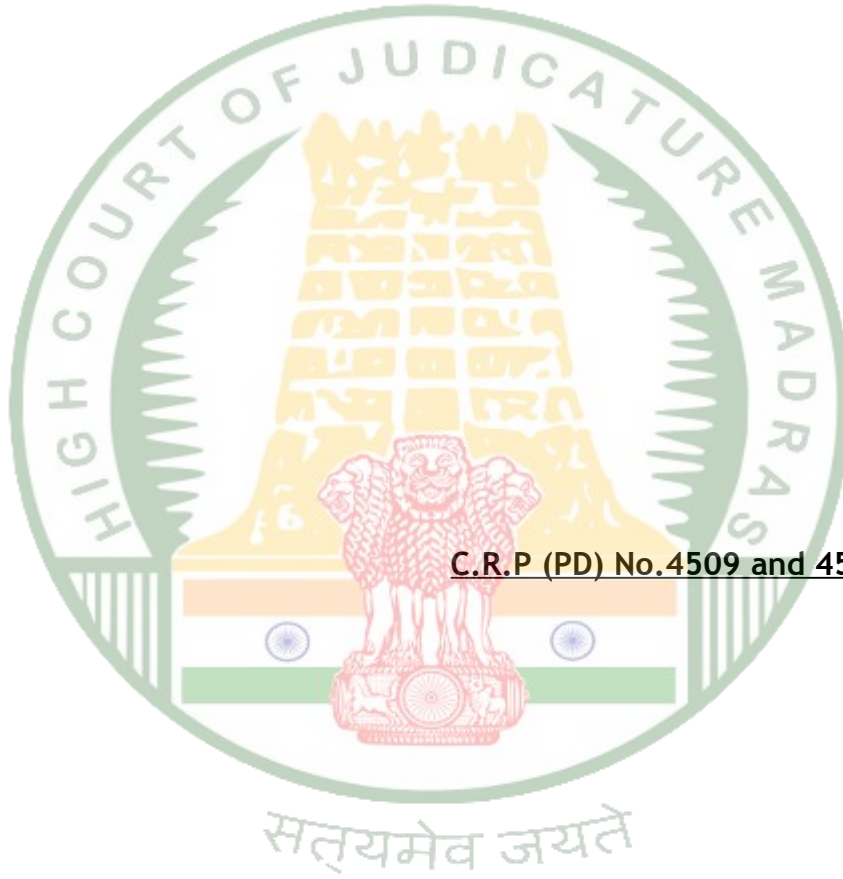
To

The Sub-Court, Vaniyampadi, Vellore District.

WEB COPY

M.SUNDAR, J.,

vsm



C.R.P (PD) No.4509 and 4510 of 2013

WEB COPY

02.07.2018