WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.4 of 2017

A.Veerasamy ...Petitioner/ Respondent

Vs.

1. Selvi

2.V.Gopalakrishnan

3.V.Mohanasundaram
(The respondents 2 and 3 minors represented through their mother/1st respondent. Amended as per order of this Hon'ble Court made in Crl.M.P (MD) 10439 of 2016 in Crl.RC(MD) No.SR.32450 of 2016 dated 25.10.2016) ...Respondents

PRAYER: Revision filed under Section 397 r/w.401 of the Code of Criminal Procedure, to call for the records relating to the order dated 29.10.2015 in M.C.No.5 of 2015 on the file of the Family Court, Sivagangai set aside the same.

For Petitioner : Mr.J.Anandakumar

For Respondents: Mr.V.Kannan

ORDER

This revision petitioner is directed against the maintenance order passed by the trial court in respect of the wife and two children of the revision petitioner.

2. The trial court after considering the plea of the respondents herein has fixed Rs.2500/- per month to each of the respondents.

3. The contention of the petitioner is that income of the revision petitioner has not been properly proved . However, the trial court has fixed the income of the revision petitioner as Rs.40,000/- per month and had fixed Rs.2500/- per month in each of the claims. It is also contended that this is an exparte order and therefore it is liable to be set aside.

https://hcservices.ecourts.gov.in/hcservices/

4. A perusal of the record indicates that despite notice to the revision petitioners herein he has failed to attend the court and therefore the trial court after considering the documents

and the pleadings has fixed Rs.2500/- per month as maintenance.

5. It is also contended by the counsel for the respondent that the petitioner herein deliberately abstained himself from attending the court and after incurring an order to pay maintenance has preferred this revision belatedly with delay of 250 days and till date he has not paid any maintenance except depositing Rs.67,000/- pursuant to the condition imposed by this Court while admitting the revision petition.

6. Heard the rival submission of the parties.

7. It is true that no income certificate or any document to prove the income of the revision petitioner was filed before the trial court, but however it is not the case of the revision petitioner that he is an income less person or the averment made in the maintenance case are false. The exparte order has been passed only due to the default of the revision petitioner. He cannot take advantage on his own fault. If at all he needs another opportunity to prove his actual income and want any modification in the maintenance amount fixed, he has to first discharge the entire arrears fixed by the trial court. In this regard the counsel for the revision petitioner submits that besides Rs.67500/- paid on 16.12.2016, pursuant to the direction of this court, he is ready to pay another Rs.75000/- towards the arrears, so that he may have an opportunity to contest the maintenance case on merits.

8. In the light of the above circumstances this Court passes the following order:

The revision petitioner shall deposit a sum of Rs. 75000/- in M.C.No.5 of 2015 on the file of the Family court, Sivagangai on or before 30.10.2018, and on such deposit the trial court shall restore the MC. Thereupon the trial court shall decide the maintenance case on merits within a period of three months from the date of deposit. The respondent is at liberty to withdraw Rs.75000/-. If the revision petitioner fails to deposit Rs.75,000/- or before 30.10.2018, the order of the remand shall stand revoked automatically.

9. The Criminal Revision case is disposed of.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

https://hcservices.ecourts.gov.in/hcservices/

Sub Assistant Registrar(CS-II)

WEB COPY

To

The Family Court,
Sivagangai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+ 1 CC TO MR.V.KANNAN, ADVOCATE IN SR NO. 84878

AAV
BU/RSK/SAR-II : 27.09.2018 : 3P/5C

Crl.R.C(MD)No.4 of 2017
17.09.2018

https://hcservices.ecourts.gov.in/hcservices/