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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 12.04.2018
DELIVERED ON : 02.08.2018
CORAM

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

C.R.P. (MD) (PD) No.1693 of 2016
and
CMP (MD) No.8246 of 2016

Arul Xavier Petitioner/Respondent/Petitioner

vs

Rose Antony Joice Respondent/Petitioner/ Respondent

PRAYER: Revision filed under Article 227 of Constitution of India against the order dated 04.07.2016 passed in I.A.No.44 of 2012 in I.D.O.P.No.197 of 2011 on the file of the District Judge, Kanyakumari District @ Nagercoil.

For Petitioner : Mr.D.Saravanan
For Respondent : Mr.S.R.Anbarasu

ORDER

Challenging the order dated 04.07.2016 passed in I.A.No.44 of 2012 in I.D.O.P.No.197 of 2011 on the file of the learned District Judge, Kanyakumari District @ Nagercoil, the petitioner has filed this Civil Revision Petition.

2. The petitioner has filed I.D.O.P.No.197 of 2011 to dissolve the marriage between the petitioner and the respondent. Resisting the I.D.O.P., the respondent filed counter.

3. Pending I.D.O.P., the respondent filed I.A.No.44 of 2012 seeking interim maintenance of Rs.50,000/- to her as alimony pendente lite and Rs.10,000/- towards litigation expenses alleging that the petitioner has failed to perform his matrimonial obligations and failed to pay necessary living expenses and made the respondent and her two children to stay without any cause. Since the respondent has no employment, she filed suit in O.S.No.19 of 2004 against the petitioner and the said suit was decreed on 05.01.2005. As against the decree in O.S.No.19 of 2004, the petitioner has filed appeal with delay condonation petition. Though the delay condonation petition was allowed with terms, till date the appeal has not been numbered. It is alleged that despite having sufficient income, the petitioner has failed to maintain the respondent and her children. According to the respondent, the petitioner was earning more than Rs.1,00,000/- per month from the yield of the property owned by him and in fact, there was a



maintenance arrears of Rs.7,88,500/- as per the decree in O.S.No.19 of 2004. Therefore, the respondent sought interim maintenance of Rs.50,000/- till the disposal of the main petition.

4. Resisting the petition, the petitioner filed counter stating that only to harass her, the respondent has filed the petition. It is stated that the petitioner lost his job from Railway department and thereafter he is in starvation. He was affected with so many ailments and he was suffering from Cancer and till date, he was continuing his treatment. The respondent, nor the children ever enquired about his health condition. The petitioner was not having any separate property nor any income and in fact, he was living with mercy of his relatives. It is stated that the respondent was having surplus jewels, properties and cash and in hand. She owned properties in S.Nos.781/12, 781/16 of Eraniel village and in 68/7 of Villukury village and various other properties, house and bank deposits. On the other hand, the petitioner has no properties on his own and no income or job and unable to carry any works due to his illness.

5. Upon consideration of the rival submissions, the trial Court partly allowed the petition directing the petitioner to pay a sum of Rs.20,000/- per month as interim alimony to the respondent from the date of filing of the main O.P. and Rs.10,000/- as litigation expenses. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

6. I heard Mr.D.Saravanan, learned counsel for the petitioner and Mr.S.R.Anbarasu, learned counsel for the respondent and also perused the materials available on record.

7. The learned counsel for the petitioner submitted that the trial Court failed to note that the petitioner was unemployed and was aged 57 years. The petitioner is taking treatment for the past seven years for throat cancer and nobody was there to look after him. He submitted that the trial Court without considering the plight of the petitioner, awarded Rs.20,000/- as interim alimony and Rs.10,000/- as litigation expenses, which are highly arbitrary and prejudicial and out to have been set aside.

8. Per contra, the learned counsel for the respondent submitted that the trial Court having found the capacity of the petitioner, awarded Rs.20,000/- towards interim maintenance. He would submit that the petitioner has sufficient means to pay the interim maintenance awarded by the trial Court and there is no need to interfere with the same.

9. While partly allowing the petition filed by the respondent for interim maintenance, the trial Court observed that until divorce is granted by the matrimonial Court, the petitioner is duty bound to pay maintenance as well as costs of the litigation. Placing reliance upon the decision in Harichand Srinivas Managaonkar v. Sunanda,



reported in CDJ 2001 SC 188, the trial Court held that if the husband is the petitioner in the matrimonial dispute either for restitution of conjugal rights or for divorce, he shall not be allowed to prosecute the case, if he refuses interim alimony and therefore, the trial Court cannot deny the statutory claim of maintenance to the respondent and accordingly, directed the petitioner to pay Rs.20,000/- per month as interim maintenance.

10. The short question that falls for consideration is whether trial Court was right in directing the petitioner to pay a sum of Rs.20,000/- per month as interim maintenance and also litigation expenses of Rs.10,000/- to the respondent.

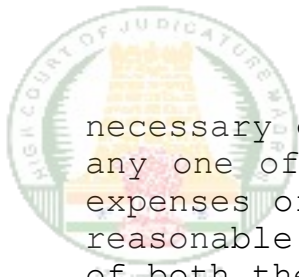
11. This Court is not inclined to go into the merits of the rival contentions advanced by the parties in the main O.P. The only question that arises for consideration is whether the respondent is entitled to maintenance pending main O.P. and whether the amount of Rs.20,000/- awarded by the trial Court is on the higher side.

12. In an unreported judgment in Civil Appeal No.4615 of 2017, dated 30.03.2017 (Manish Jain v. Akanksha Jain), the Hon'ble Supreme Court held as under:

"15. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Like wise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation, the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."

13. The learned counsel for the petitioner argued that the respondent is having sufficient means to maintain herself and since the petitioner was a cancer patient and was continuing his treatment by spending huge amount, he is not in a position to pay the maintenance as awarded by the Tribunal. The learned counsel further argued that in fact, the petitioner is living with the mercy of his relatives.

14. Section 24 of the Hindu Marriage Act empowers the Court in any proceeding under the Act, if 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 any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the petitioner and the respondent.

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15. In an unreported judgment in Shailja and another v. Khobbanna (Criminal Appeal Nos.125-126 of 2017, dated 18.1.2017), the Hon'ble Supreme Court observed as under:

"whether the wife is capable of earning or whether she is actually earning are two different requirements and merely because she is capable of earning is not a sufficient reason to reduce the maintenance awarded by the Family Court."

16. In the case on hand, it is not the case of the petitioner that the respondent was working and was earning considerable amount as salary. The allegation that the respondent is owning properties would not be sufficient to hold that she is in a position to maintain herself. An order for maintenance pendente lite of the proceedings is conditional on the circumstance that the wife who makes a claim has no independent income.

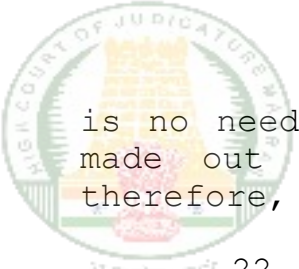
17. As far as the amount of interim maintenance as sought for and awarded by the trial Court is concerned, the paying capacity of the petitioner is required to be looked into.

18. According to the respondent, the petitioner was earning Rs.1,00,000/- per month from the yield of the property owned by him and is a rich person. Though the same was denied by the petitioner, nothing has been produced by the petitioner.

19. It is to be noted that the respondent had filed O.S.No.19 of 2004 for maintenance and the same was decreed. According to the respondent, there was a maintenance arrears of Rs.7,88,500/- and the petitioner is neglecting to provide maintenance, which fact was not denied by the petitioner.

20. Keeping in view the paying capacity of the petitioner, the trial Court had directed the petitioner to pay a sum of Rs.20,000/- per month as interim alimony, which according to me, is a reasonable amount and no interference is warranted.

21. Coming to the litigation expenses awarded by the learned District Judge, Section 24 of the Hindu Marriage Act stipulates the other party to pay to the petitioner the expenses of the proceedings. In the case on hand, the learned District Judge awarded Rs.10,000/- towards litigation expenses to be paid by the petitioner, which, according to this Court, is reasonable and there



is no need to interfere with the same. No valid grounds have been made out to interfere with the order of the trial Court and therefore, the Civil Revision Petition is liable to be dismissed.

22. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Judge,
Kanyakumari District @ Nagercoil.

+1CC to Mr.S.R.ANBARASU, Advocate, SR.No. 77400
+1CC to Mr.D.SARAVANAN, Advocate, SR.No. 77059

C.R.P. (MD) (PD) No.1693 of 2016 and
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