

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1017 of 2013
and
M.P.No.1 of 2013

Nathan Francis Anand Kumar

.. Petitioner

Vs.

1. Angelina Selvarani Francis

2. Master Allen
rep. by mother & natural guardian
Angelina Selvarani Francis

.. Respondent

Criminal Revision filed under Sections 397 and 401
Cr.P.C. Praying to call for the records in MC.No.204 of 2011 and
revise the order dated 05.06.2013 passed by the learned First
Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mr.L.Rajasekar

For Respondents: Mr.J.T.Rajasuriya

O R D E R

This Criminal Revision case has been filed to set aside the
order dated 05.06.2013 made in MC.No.204 of 2011 passed by the
learned First Additional Principal Judge, Family Court, Chennai.

2. The revision petitioner is the husband, the first
respondent is the wife and the second respondent is their son.
The first respondent/wife filed a petition under Section 125
Cr.P.C seeking maintenance stating that the marriage between the
petitioner and the first respondent was solemnised on
11.04.1997, out of their wedlock, they blessed with a son/second
respondent herein on 03.03.1999. Due to misunderstanding
between the petitioner and the first respondent, the respondents

herein left the matrimonial home and she is living separately and therefore, the first respondent filed a petition in MC.No.204 of 2011 before the learned First Additional Principal Judge, Family Court, Chennai, for maintenance. After hearing the arguments advanced on either side, the learned First Additional Principal Judge awarded a sum of Rs.30,000/- to the first petitioner therein/wife and Rs.20,000/- to the second petitioner therein/son towards maintenance. Challenging the said order, the husband filed the present revision before this Court.

3. The learned counsel for the revision petitioner would submit that the first respondent/wife left the matrimonial home without any valid reason and she was not discharging her duty as dutiful wife. The revision petitioner/husband filed a petition in OP.No.3751 of 2010 seeking divorce. During pendency of the said OP, the respondents filed a petition in I.A.No.475 of 2011 seeking interim maintenance. Meanwhile, the respondents/wife and son filed a petition under Section 125 Cr.P.C in MC.No.204 of 2011 for maintenance. The house residing by the respondents is constructed by the petitioner and the first respondent also accommodate her parents in sophisticated manner. The petitioner also invested a sum of Rs.23,00,000/- as Fixed Deposit in the name of the first respondent and the respondents also enjoying the benefit of interest. This fact has not been considered by the Family Court. Therefore, the order of the Family Court warrants interference.

4. The learned counsel appearing for the respondent would submit that the revision petitioner is earning more than Rs.4,00,000/- per month, compared to his income, the award passed by the Family Court is very low. The respondents herein are entitled to get a maintenance on par with the status of the husband/the revision petitioner herein. Therefore, the order of the Family Court does not warrant any interference. While awarding the maintenance to the wife and children, the Court has to see the status of the husband eventhough she is not residing in the matrimonial home, the very same benefit can be extended to the wife. In this case, comparing to the status of the husband, the benefit enjoyed by the first respondent is very low. The learned counsel placed reliance on the judgment of Hon'ble Apex Court in the case of (i) Chaturbhuji Vs. Sita Bai and (ii) Bhuwan Mohan Singh Vs. Meena & Ors reported in Indian Kanoon-1720873 and 5226738 respectively in support of his contention.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents and also perused the materials available on record.

6. Admittedly, the relationship between the petitioner and the first respondent is not in dispute and the paternity of the second respondent/son is also not in dispute. The house, which the respondents are residing, was constructed by the petitioner is also not in dispute. The petitioner deposited the amount of Rs.23,00,000/-in Fixed Deposit in the name of the first respondent is also not in dispute. The petition for divorce filed by the petitioner/husband before the Family Court is pending from the year 2010. During pendency of the matrimonial OP, the respondents herein filed a petition under Section 36 of Indian Divorce Act. Section 36 of Indian Divorce Act reads as follows:-

"36. Alimony pendente lite.--In any suit under this Act, whether it be instituted by a husband of a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be."

The Family Court Judge failed to note the mandatory provisions of Section 36 of Indian Divorce Act. The petition filed by the first respondent/wife has not been disposed of within a period of 60 days.

7. This Court feels that while the petition for divorce is pending, more soever when petition filed under Section 36 of Divorce Act is pending before the Competent Court without disposing the said petition, the maintenance amount awarded under Section 125 Cr.P.C is unwarranted. The learned Family Court Judge failed to understand the scope of Section 125 Cr.P.C. Hence, the citations referred to by the learned counsel for the petitioner is not applicable to the present case on hand. Therefore, this Court is inclined to set aside the order passed by the Family Court.

8. Accordingly, this Criminal Revision Case is allowed. The order dated dated 05.06.2013 in MC.No.204 of 2011 passed by the learned First Additional Principal Judge, Family Court, Chennai is hereby set aside. The learned First Additional Principal

Judge, Family Court, Chennai is directed to dispose of I.A.No.475 of 2011 in OP.No.3751 of 2010 on merit and in accordance with law, within a period of 60 days from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed, if any.

Sd/-
Assistant Registrar(Insp.Cell)

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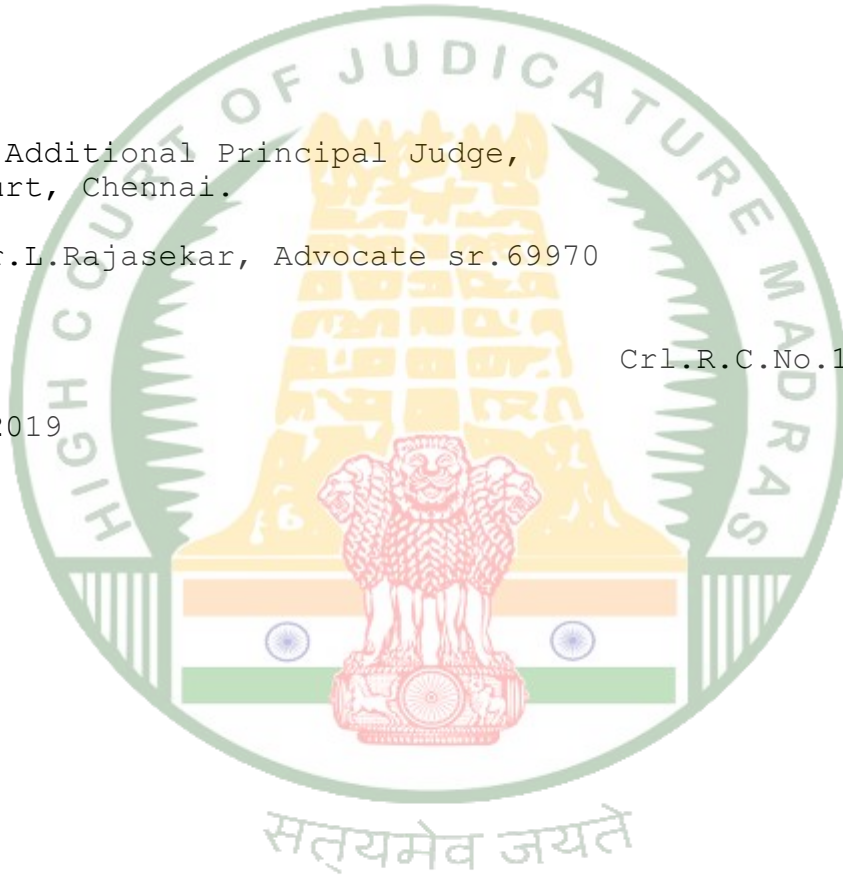
To

The First Additional Principal Judge,
Family Court, Chennai.

+1cc to Mr.L.Rajasekar, Advocate sr.69970

Cr1.R.C.No.1017 of 2013

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