

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

C O R A M

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.(PD) No.267 of 2018

and

M.P.Nos.1473 and 20806 of 2018

A.Rajagopal @ Badmanaban,

... Petitioner

Vs.

P.Rajeswari

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed in I.A.No.44 of 2017 in H.M.O.P. No.235 of 2015 dated 07.11.2017 on the file of the Subordinate Judge at Ponneri.

For Petitioner : Mr.K.Mohanamurali

For Respondent : Mr.M.Pitchairathinam

ORDER

This Civil Revision Petition has been filed challenging the order granting interim maintenance to the respondent herein and her minor child at the rate of Rs.25,000/- per month from the date of the petition.

2. According to the learned counsel for the petitioner, the respondent herein had admitted during the course of arguments in the proceedings in the interim maintenance application that she was working in a private company and earning a sum of Rs.15,000/- per month. The learned counsel further submits that the respondent has now reiterated through her counter affidavit filed in the present Civil Revision Petition that she is earning a sum of Rs.15,000/- per month and since she is in a position to maintain herself, he seeks for setting aside the order of interim maintenance.

3. The learned counsel for the respondent on the other hand submitted that the petitioner was very irregular in making the monthly payments. He would further submit that the amount of Rs.25,000/- is very meager with which she is unable to maintain both herself and her minor child. He further submitted that though the respondent herein is earning a sum of Rs.15,000/- per month, the employment is only temporary in nature and even the sum of Rs.15,000/- is not sufficient to maintain herself and minor child and as such no interference is required in the order passed by the Subordinate Court.

4. I have given my careful consideration to the submissions made by the respective counsels.

5. The petitioner's submissions that the respondent herein had admitted that she was earning a sum of Rs.15,000/- before the Lower Court at the time of arguments, is now ratified through the counter affidavit filed by her in which she has stated that she is earning a sum of Rs.15,000/- in a private company as a temporary staff on contract basis from the year 2017 onwards.

6. In my view, the sum of Rs.15,000/- would be sufficient to maintain the respondent and as such the grant of maintenance in favour of the respondent requires re-consideration. Nevertheless, the respondent herein had sought for maintenance both for herself and her minor child. It is not in dispute that the custody of the minor child is with the respondent herein. When the maintenance came to be awarded in favour of the respondent, the Subordinate Judge had also taken into consideration the maintenance of minor child also and thereby awarded a sum of Rs.25,000/- per month towards interim maintenance. Now, that the respondent has admitted that she is gainfully employed and drawing the salary of Rs.15,000/- per month, it

would be appropriate that the maintenance awarded in favour of the respondent herein be set aside and a sum of Rs.12,500/- (Rupees Twelve thousand and Five hundred only) can be awarded as interim maintenance in favour of the respondent's minor child, namely, Ashirya.

7. The submission that the respondent herein is only temporarily employed on contract basis cannot be a criteria for sustaining maintenance awarded in her favour under section 24 of the Hindu Marriage Act. Whenever the wife has no independent income sufficient to maintain herself, she would be entitled to seek for a maintenance. Since this Court is of the view that the admitted income of Rs.15,000/- is sufficient income to maintain herself, nature of employment will not have any bearing.

8. In the light of the above observations, the order passed by the learned Subordinate Judge, Ponneri dated 07.11.2017 in I.A. No.44 of 2017 is set aside and consequently modified to the effect that the petitioner herein shall pay interim maintenance at the rate of Rs.12,500/- (Rupees Twelve thousand and Five hundred only) per month to his minor child Ashirya, who shall be represented by her mother, namely, respondent herein from the date of application in I.A.No.44 of 2017. The petitioner herein shall pay the entire arrears of maintenance within a period of two months from the date

of receipt of a copy of this order.

9. Accordingly, the Civil Revision Petition stands partly allowed.

Consequently, connected Miscellaneous Petitions are closed. No Costs.

03.01.2019

Speaking order/Non speaking order

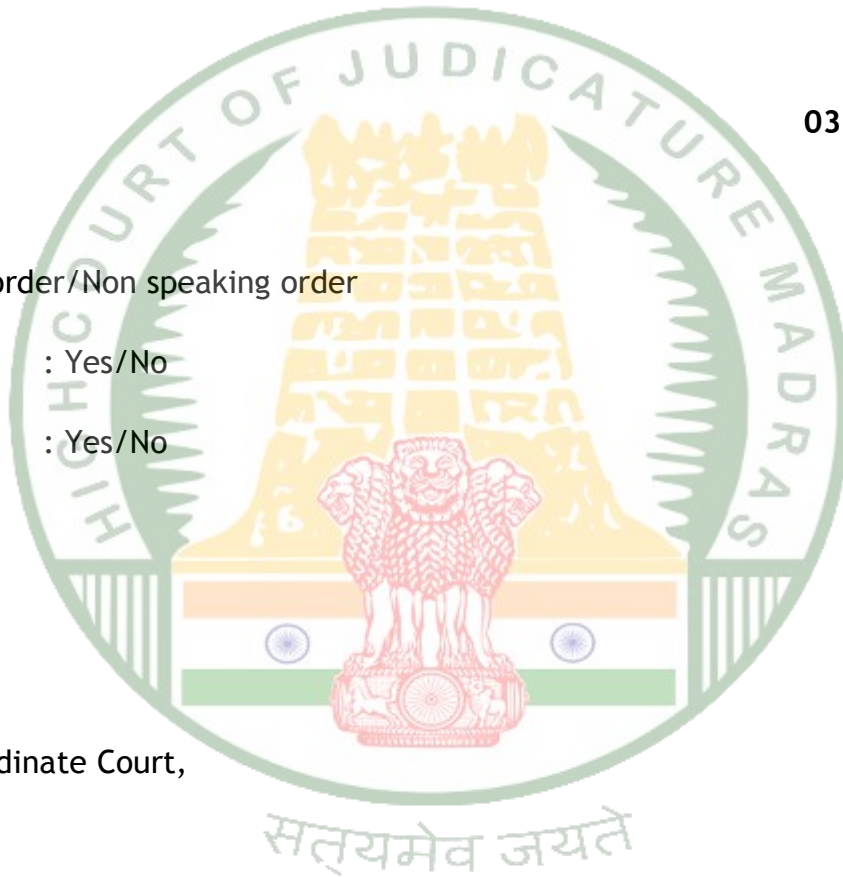
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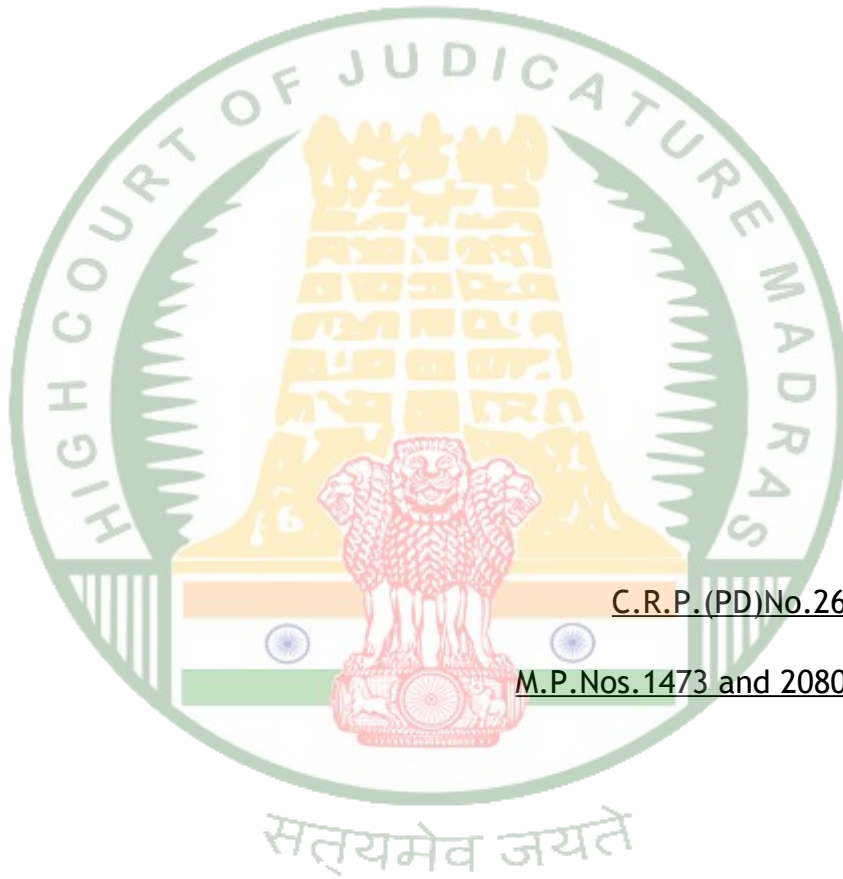
The Subordinate Court,
Ponneri.



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M.S.RAMESH, J.

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