

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (PD) No.2757 of 2012

B.Jayaraman

... Petitioner

Vs.

J.Shanthi

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 30.11.2011 passed in I.A.No.23 of 2010 in H.M.O.P.No.23 of 2009 by the Subordinate Judge, Gudiyattam.

For Petitioner

: Mr.T.Dhanyakumar

For Respondent

: No appearance

ORDER

This Civil Revision Petitioner is the petitioner in H.M.O.P.No.23 of 2009. He filed the said petition under Section 13 of the Hindu Marriage Act, against his wife Shanthi, the respondent herein, seeking for grant of decree of divorce. Pending such H.M.O.P.No.23 of 2009, the respondent filed a petition in I.A.No.23 of 2010, under Section 24 of the Hindu Marriage

Act, 1955 seeking for interim maintenance of Rs.5,000/- per month and also awarding a cost of Rs.10,000/- towards litigation expenses to her.

2. The learned Subordinate Judge, Gudiyattam, Vellore District, after full contest, allowed the I.A.No.23 of 2010 in H.M.O.P.No.23 of 2009 and directed the present revision petitioner to pay a sum of Rs.3,500/-p.m. to the respondent towards maintenance. The learned Subordinate Judge, further directed the revision petitioner to pay a sum of Rs.5000/- towards litigation expenses. Aggrieved over the same, the present civil revision petition has been filed by the petitioner herein.

3. No appearance on behalf of the respondent.

4. The learned counsel appearing for the revision petitioner contended that since the respondent had filed a petition in M.C.No.66 of 2009 under Section 125 of the Code of Criminal Procedure before the Chief Judicial Magistrate, Vellore and orders were also passed in the said petition directing the present revision petitioner to pay a sum of Rs.2,000/- p.m. to the respondent herein, the petition filed by the respondent under Section 24 of the Hindu Marriage Act, claiming maintenance from the revision petitioner is not maintainable.

5. The law pertaining to maintenance is an important legislation to protect the right of the women and advancing justice to estranged wife. The right to claim maintenance can particularly be found in Section 125 of the Criminal Procedure, which also confers the right to claim maintenance of parents and minor children.

6. The remedy under Section 125 of the Code of Criminal Procedure is prompt and inexpensive as compared to personal laws. The provision relating to maintenance under any personal law is however, distinct and separate from Section 125 of the Code of Criminal Procedure. There is no conflict between both the legal provisions. A person is entitled to get maintenance under Section 125 of the Code of Criminal Procedure despite having obtained an order under the applicable personal law. It is also a settled law that apart from the law enumerated under Section 125 of the Code of Criminal Procedure, an aggrieved wife can also claim maintenance under the relevant provisions of the Hindu Marriage Act, 1955 and the protection of woman under the Domestic Violence Act 2005. The civil revision petitioner had contended that he is receiving a pension of Rs.6,960 + 2380, totalling Rs.9,760/-, apart from owning agricultural land measuring one acre and 45 cents in Beemanpatti Village, Gudiyatham with 40 coconut trees and 89 cents of land in Chettykuppam, Vellore. The Chief

Judicial Magistrate, Vellore had directed the present revision petitioner to pay a sum of Rs.2,000/- per month to the respondent towards maintenance, under Section 125 of the Code of Criminal Procedure. The Subordinate Judge, Gudiyattam awarded a sum of Rs.3,500/- per month to the respondent towards maintenance, under Section 24 of the Hindu Marriage Act. No evidence is adduced by the civil revision petitioner either before the Subordinate Judge, Gudiyattam or before this court to show his actual income. The learned Chief Judicial Magistrate, Vellore in his orders dated 13.12.2010 in M.C.No.66 of 2009 had observed that the income of the revision petitioner would be Rs.29,760/-, which includes his pension and income from the agricultural land.

6. The concept of maintenance aims at putting the wife back to the same position of comfort and lifestyle, as she was at the time when her marriage existed. It is pertinent to point out that even during the year 2010, the monthly income of the revision petitioner was roughly fixed at Rs.29,760/-. In the facts and circumstances, awarding Rs.3,500/- per month towards maintenance and Rs.5,000/- towards litigation expenses to the respondent by the Subordinate Judge, Gudiyattam under Section 24 of the Hindu Marriage Act cannot be said to be excessive.

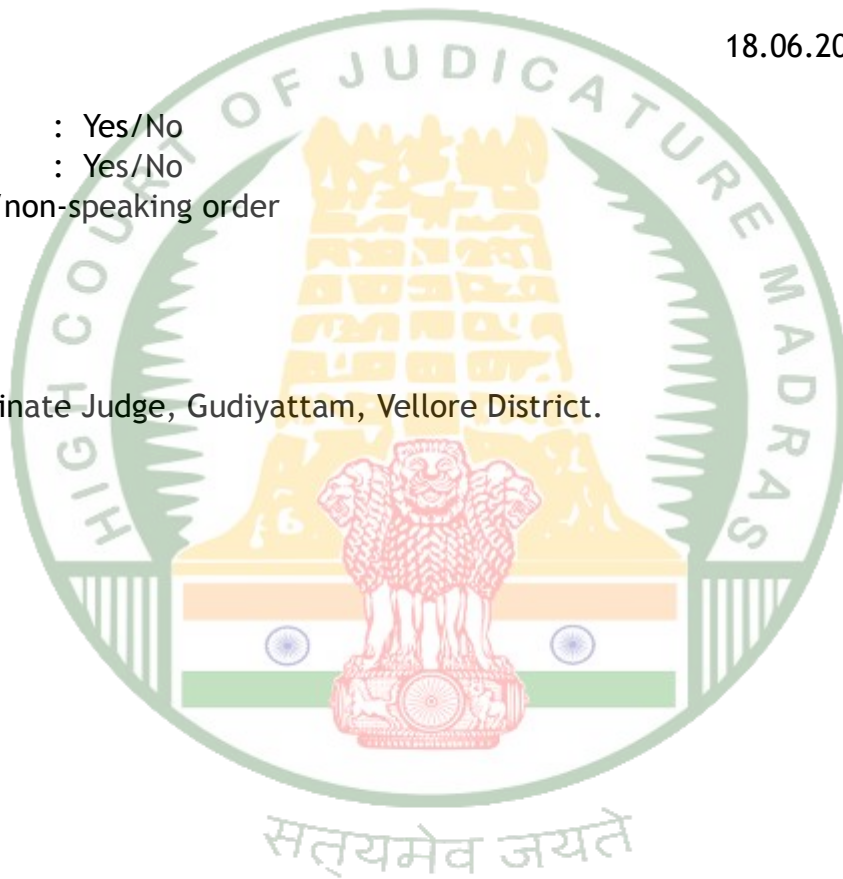
7. Accordingly, the civil revision petition is dismissed. No costs. The orders passed by the trial court is upheld.

18.06.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
mst

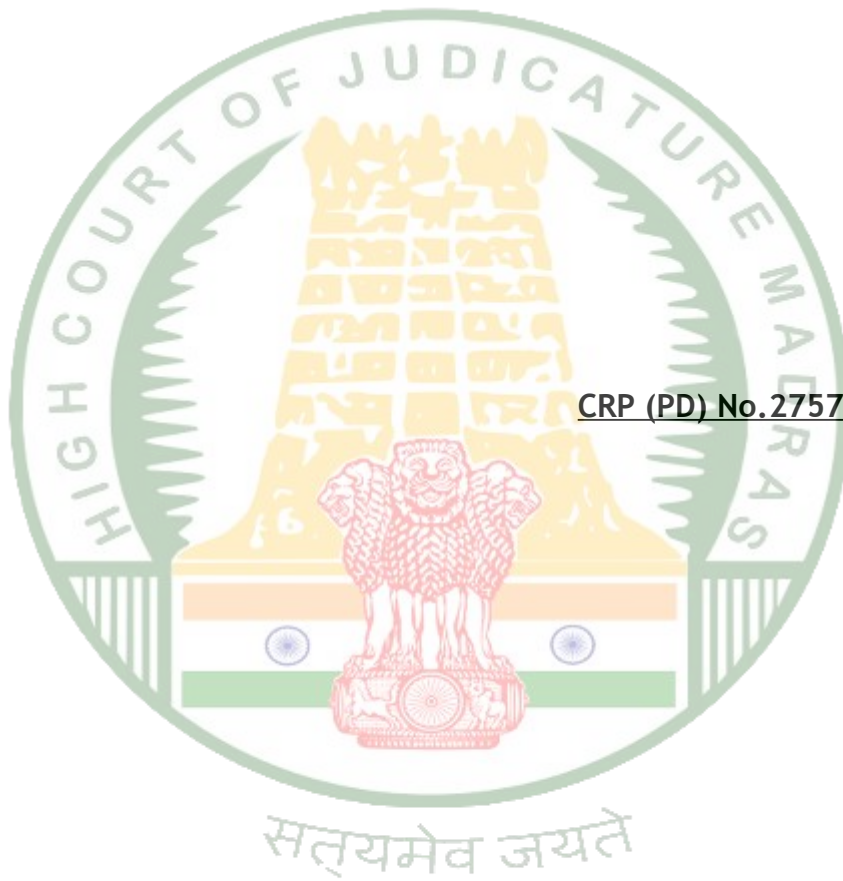
To

1. Subordinate Judge, Gudiyattam, Vellore District.



WEB COPY

R.HEMALATHA,J.
mst



CRP (PD) No.2757 of 2012

WEB COPY

18.06.2019