

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CRL.R.C.NO.1386 OF 2017

AND

CRL.M.P.NO.13557 OF 2017

Aka Pachaimal

... Petitioner

Vs.

1. Inesh

Minor rep.by his natural guardian
mother, the second respondent herein.

2.S.Selvi @ Thamizhselvi

... Respondents

Prayer:-

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgment passed in Crl.M.P.No.2497 of 2014 in M.C.No.2 of 2012 on the file of the District Munsif cum Judicial Magistrate Court, Uthukottai, dated 21.07.2017.

For Petitioner : Mr.K.Manimaran

ORDER

The petitioner is the husband and the respondents are the son and wife of the petitioner. Due to a matrimonial dispute between the husband and wife, they got separated. The respondents filed the Maintenance Case in M.C.No.2 of 2012 before the District Munsif cum Judicial Magistrate, Uthukottai, praying for a sum of Rs.7,000/- per month towards maintenance and to award a sum of Rs.50,000/- towards medical expenses to the child, as the child is suffering from Haemangioma at his left side shoulder. Considering the facts and circumstances of the case, an ex-parte order was passed by the Court below allowing the said petition, on 07.09.2012. Thereafter, the husband filed a petition in Crl.M.P. No.2497 of 2014 in M.C.No.2 of 2012 praying for condoning the delay of 575 days in filing the petition for setting aside the ex-parte order passed by the

Court below in the maintenance case. The said petition filed by the petitioner was dismissed. Hence, the present Criminal Revision Case.

2.The learned counsel for the petitioner has submitted that the Court below ought to have seen that the second respondent had frequently gone to her parents' house without assigning any reasons; that she had voluntarily left the matrimonial home and living with her parents. It is also submitted that she was not a dutiful wife to the petitioner at the time when they were not separated. It is further submitted that the petitioner is doing coolie work and due to his ill health, his parents are taking care of him. Citing the maintenance amounts fixed by the Court below as disproportionate, the learned counsel prayed that the Court below ought not to have dismissed the petition filed for condoning the delay in filing the petition for setting aside the ex-parte order, as the petitioner has shown sufficient cause for such delay.

3.This revision has been filed in the year 2017 and notice of motion has been ordered on 01.11.2017 and thereafter the matter has been listed only today. It is seen that no steps have been taken by the learned counsel for the petitioner to serve papers to the other side even at this length of time. Since no order prejudicial to the interest of the respondent is going to be passed, this Court is inclined to dispose of this revision.

4.Heard the learned counsel for the petitioner and perused the papers.

5.It is seen that a petition in C.M.P.No.2391 of 2013 has been filed by the respondents herein to direct the petitioner herein to pay the total arrears of maintenance amount, as he failed to pay the maintenance amounts. The petitioner appeared in person along with his counsel before the Court below on 02.12.2013 and thereafter he filed counter in C.M.P.No.2391 of 2013 on 05.05.2014. Hence, on coming to know about the petition filed in C.M.P.No.2391 of 2013 by the respondents herein, the petitioner herein would have very well known about the information that he was set ex-parte on 31.08.2012 and the order passed on 07.09.2012. The contention of the petitioner before the Court below that the petitioner did not know about the petition filed for setting aside the ex-parte order by the earlier Advocate, was rejected by the Court below, due to the submission made by the counsel for the other side that even after making appearance in the petition filed in C.M.P.No. 2391 of 2013, the petitioner has deliberately filed the petition for condonation of delay. The Court below has given ample reasons for accepting such submission made on behalf of the respondents herein. On a thorough perusal of the papers, this Court is of

the considered view that the Court below has dealt with the matter in proper perspective and has passed the impugned order.

6. In view of the above stated circumstances, the Criminal Revision Case is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KM

To

1. The District Munsif cum Judicial Magistrate,
Uthukottai.

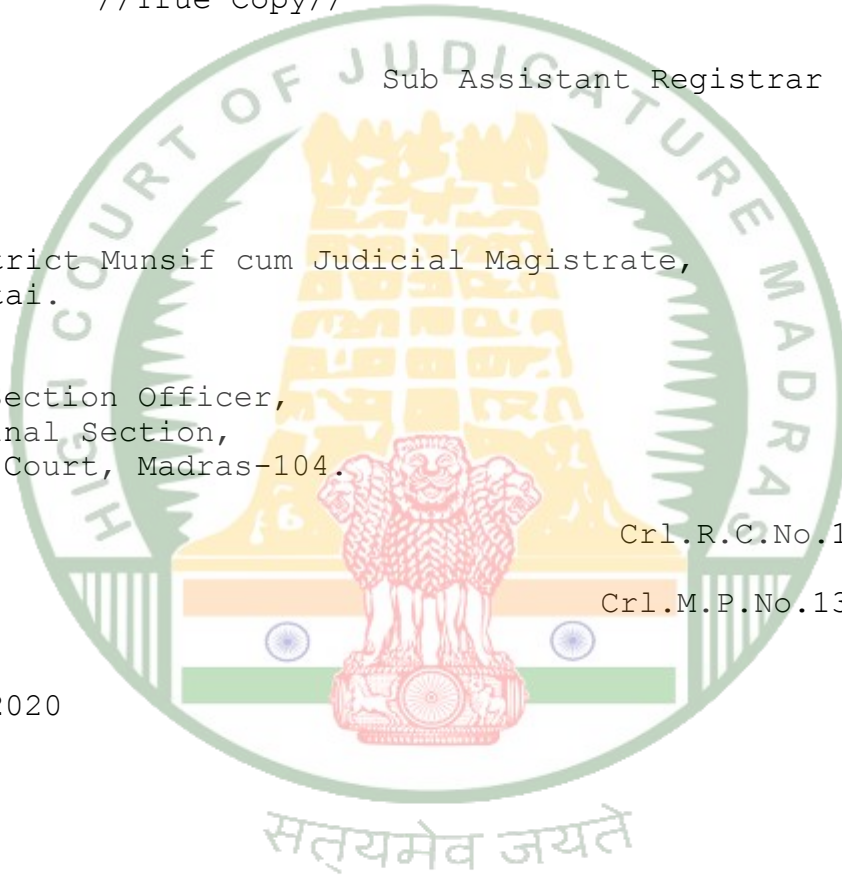
Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104.

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and

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SSV(CO)
CS/13/03/2020



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