

C.R.P. (PD) No.173 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.173 of 2021
and
C.M.P. No.1588 of 2021

Ganesan

... Petitioner

Vs.

Devi

... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India, praying for to set aside the Decree and order dated 30.09.2020 passed in I.A. No.1 of 2019 in HMOP No.36 of 2019 pending on the file of the learned Sub-ordinate Judge, Mettupalayam, Coimbatore District.

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For Petitioner

... B. Thirumalai

For Respondent

... No Appearance

ORDER

The Civil Revision Petition has been filed under Article 227 of the Constitution of India, praying for to set aside the Decree and order dated 30.09.2020 passed in I.A. No.1 of 2019 in HMOP No.36 of 2019 pending on the file of the learned Sub-ordinate Judge, Mettupalayam, Coimbatore District.

2.The case of the petitioner is that the respondent and the petitioner are husband and wife. Their marriage was solemnized on 16.09.2015 at Sri Shanmuganathar Temple at Sivagangai District, as per Hindu rites and customs with the blessings of elders of both family. The respondent wife filed a petition in H.M.O.P. No.36 of 2019 on the file of the Sub-Ordinate Judge, Mettupalayam, Coimbatore under Section 13(1)(ia)(ib) of the Hindu Marriage Act, seeking for divorce due to misunderstanding and dispute between the spouse on various grounds. During pendency of the said petition, the respondent wife has filed I.A. No.1 of 2019 on its file seeking for interim maintenance and litigation expenses of Rs. 20,000/- and Rs.25,000/- respectively. The Family Court, after hearing both sides and taking into consideration the evidence

available on record, by order dated 30.09.2020 has partly allowed and directed the petitioner husband to pay a sum of Rs.3,000/- towards monthly interim maintenance till the disposal of the main petition and Rs.10,000/- towards litigation expenses to the respondent wife. Being aggrieved, the petitioner husband has filed the present Civil Revision petition to set aside the aforesaid order.

3. The learned counsel for the petitioner would submit that even though the petitioner husband has filed restitution of conjugal rights, the respondent wife refused to lead the matrimonial life with the petitioner husband and filed divorce petition against the petitioner husband on the ground of cruelty. As the respondent wife is not ready to live together with the petitioner husband, the application for restitution of conjugal rights was withdrawn by the petitioner husband in the Court below. It has further been submitted that whereas the respondent wife is living separately for about 4 years after deserting the petitioner husband without any valid reasons, the respondent wife is not entitled to claim any interim maintenance from the petitioner husband. Without considering the aforesaid aspect and while the income of the petitioner

husband could not be proved by letting documentary evidence, the Court below has awarded the interim maintenance is liable to be set aside.

4. Heard, learned counsel for the petitioner and perused the materials available on record.

5. On a perusal of the records, it is seen that the petitioner is the husband of the respondent. The respondent has filed HMOP No.36 of 2019 on the file of the Sub-ordinate Court, Mettupalayam, Coimbatore seeking for divorce under the ground of cruelty. Even though, the income proof of the petitioner and respondent was not produced before the court below either by the petitioner or the respondent, the Court below is constrained to award interim maintenance to the respondent wife as the petitioner being husband is bound duty to maintain his wife while she is living separately without any income and would have met expenses to lead her life. While so, the petitioner should not escape from the duty of family raising the grounds of no income on the side of the petitioner and other reasons till the disposal of H.M.O.P.No.36 of 2019 which is pending before the Court below. Hence, considering the present

cost of living and other aspects of the case, the Court below has awarded a sum of Rs.3,000/- per month towards interim maintenance and Rs.10,000/- towards litigation expenses.

6. Having considered the aforesaid facts and circumstances of the case, this Court is of the view that the interim maintenance is just and reasonable and it cannot be said to be set aside. As there is no perversity in the order of the Court below, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the petitioner is directed to pay interim maintenance to the respondent as per the direction of the Court below. Further, the Court below is directed to dispose of the case in HMOP No.36 of 2019 as expeditiously as possible after considering the pleadings of both parties if the petition for restitution of conjugal rights has been filed by the petitioner and the same was withdrawn by him since the respondent refused to lead life with the petitioner.

7. In the result, the Civil Revision petition stands dismissed and the order dated 30.09.2020 made in I.A. No.1 of 2019 in HMOP No.36 of

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V.BHAVANI SUBBAROYAN, J.,
lbm

2019 is hereby confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

10.02.2021

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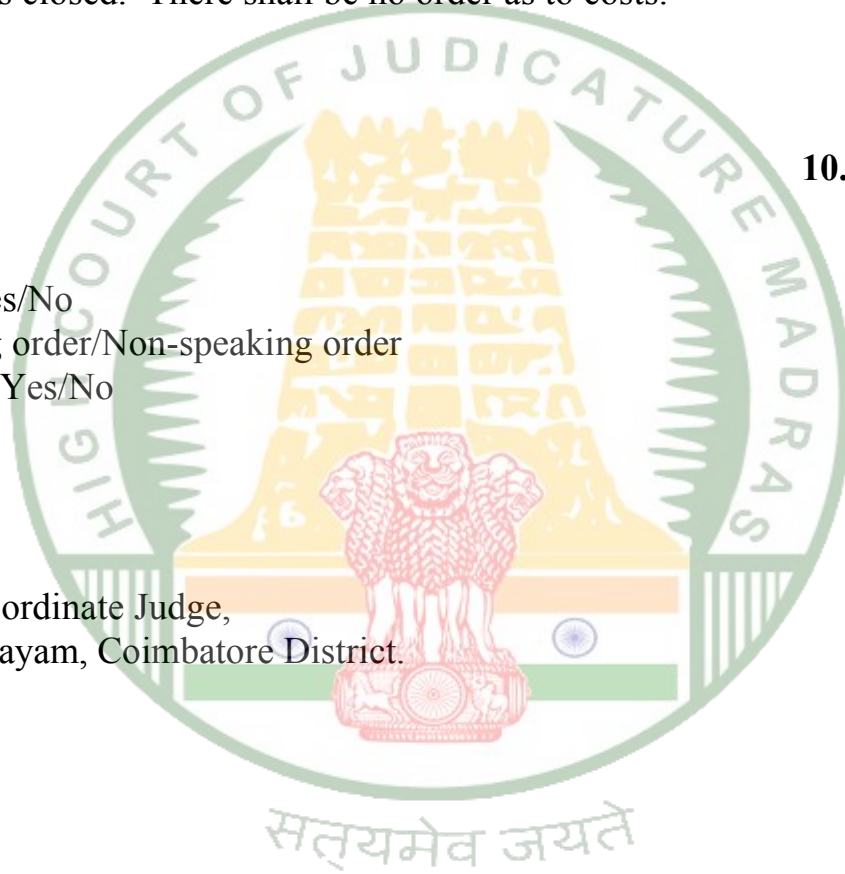
Index: Yes/No

Speaking order/Non-speaking order

Internet: Yes/No

To:

The Sub-ordinate Judge,
Mettupalayam, Coimbatore District.



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