

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1240 of 2020
and
C.M.P.No.6706 of 2020

D.Vadivel

... Petitioner

Vs.

A.Chitra @ Devaki

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal Order dated 16.10.2019 passed in I.A.No.226 of 2018 in H.M.O.P.No.63 of 2018 on the file of the learned II Additional Subordinate Judge, Coimbatore by allowing the Civil Revision Petition.

For Petitioner : Ms.Elizabeth Ravi for Mr.P.Raja

For Respondent : Mr.M.Marudhachalam

O R D E R

The present Civil Revision Petition has been filed under Article 227 Constitution of India seeking to set aside the fair and decretal order dated 16.10.2019 passed in I.A.No.226 of 2018 in H.M.O.P.No.63 of 2018 on the file of learned II Additional Subordinate Judge, Coimbatore.

2. The petitioner is the husband and the respondent is the wife. The petitioner had filed H.M.O.P.No.63 of 2018 before the learned II Additional Sub Judge, Coimbatore seeking a direction to grant divorce by raising the various grounds. The marriage between the petitioner and the respondent was solemnized on 20.01.2006 at Peraiyur, Ramanathapuram District, as per Hindu Rites and Customs and the said marriage was an arranged marriage. There was a difference of opinion arose between them mainly stating that the petitioner / husband was little on the darker side and the respondent / wife was fair. The petitioner got a job at Saudi Arabia and he was earning money and sending

the same to the respondent/ wife, the respondent and her family members were spending the said amount very lavishly. The petitioner had also bought 10 sovereigns of gold to the respondent and the respondent had pledged the said gold jewels and spent same on account of business, however, they were not able to retrieve it and the business was also on loss. When the petitioner came back from Saudi Arabia, he was shock to notice that his hard earned money was lavishly spent by the respondent and her family. Thereafter, a male and a female child were born. Since the petitioner could not pay his debts and was not able to proceed to abroad, he started his carpentering business at Coimbatore and was living in a rented a house. Inspite of petitioner earning money, the same was lavishly spent by the respondent and also she did not cohabit with the petitioner and she used to tease him in front of others and also suspected his fidelity, hence the petitioner was forced to shift his house. At that point of time, the petitioner obtained some finance / loan and constructed a house. Subsequently, some misunderstanding arose and on account of the same, a police complaint was also lodged before the All Women Police Station, the respondent's family interfered with the same and threatened the petitioner with dire consequences.

3. At that point of time, the respondent / wife filed I.A.No.226 of 2018 seeking a sum of Rs.10,000/-, as interim maintenance and Rs.15,000/- as legal expenses. A counter affidavit was filed by the petitioner / husband stating that the petitioner is earning only Rs.15,000/- per month and not a sum of Rs.40,000/- as stated by the wife. The court below after considering the pleadings and counter pleadings on either side had granted a sum of Rs.7,000/- as interim maintenance to the respondent / wife from the date of petition till the date of disposal of the H.M.O.P. and a sum of Rs.5,000/- was ordered to be paid as cost to the said petition. Further, the court below ordered the petitioner to pay the interim maintenance on or before 5th day of every calender month. In the said I.A.No.226 of 2018, minor children were produced before the court below and they have refused to proceed with the respondent / mother. Aggrieved by the said order passed by the court below dated 16.10.2019 on account of interim maintenance, the petitioner/husband has filed the present Civil Revision Petition.

4. Mrs.Elizabeth Ravi, learned counsel for the petitioner submits that the court below erred in holding that the Revision petitioner is having sufficient means to pay a sum of Rs.7,000/-, as a maintenance to the respondent. Further, the petitioner is maintaining his two children, aged 15 and 11 years respectively and he has to take care of their education, livelihood and other expenses, that apart, the petitioner has to

take care of his aged mother also, without the support of the respondent / wife, hence awarding a sum of Rs.7,000/- to the wife alone is on the higher side, he pleaded.

5. Apart from the above, the learned counsel for the petitioner also pleaded that the petitioner does not have more money, as stated by the respondent / wife and due to Corona Pandemic situation, nobody has entrusted him with carpentry work and he is not in a position to maintain himself and his dependants and prayed that the amount of money, which has been used by her at the time when he was earning money would also to be taken into consideration and due to the said act of the respondent / wife, the petitioner has to take care of his children and all those things was to be considered by the court below, however, the court below had ordered a sum of Rs.7,000/- per month, therefore, he pleaded for dismissal of the order passed by the court below.

6. On the other hand, Mr.M.Marudhachalam, learned counsel for the respondent / wife submits that it is the duty for the petitioner / husband to maintain his wife and the petitioner is working as carpenter, interior designer and he is doing contract work and earning more money. Further, the petitioner has not paid arrears of maintenance amount till date and this Court by order dated 20.03.2020 has directed the petitioner to pay a sum of Rs.35,000/- to the petitioner's account and also to deposit Rs.7,000/- on or before 5th day of every english succeeding calender month, failing which this Court had observed that the Interim order shall stand automatically vacated, but the petitioner failed to comply the same, therefore, he pleaded to direct the petitioner to pay the maintenance amount as well as the arrears amount.

7. On going through the averments pleaded by the petitioner as well as the respondent, this Court is of the opinion that there is no proof filed by both the parties that the petitioner is earning Rs.40,000/- per month. Even assuming the fact that the petitioner would be earning Rs.750/-to Rs.1,000/- per day, [however, a carpenter may not get work on all days, the same should also be taken into account] and through the said amount, the petitioner has to take care of his two children and aged mother, food, clothing, shelter, education and medical expenses, this Court assumes that the petitioner would be earning a sum of Rs.20,000/- per month. Therefore, it is just and proper for this Court to award a sum of Rs.6,000/- per month as maintenance to the respondent / wife. Further, the arrears amount shall be divided into six parts and the same shall be deposited in six equal installments [6 months] along with the maintenance amount on or before 15th day of every English calendar month.

With the aforesaid modification, the present Civil Revision Petition is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssd

To

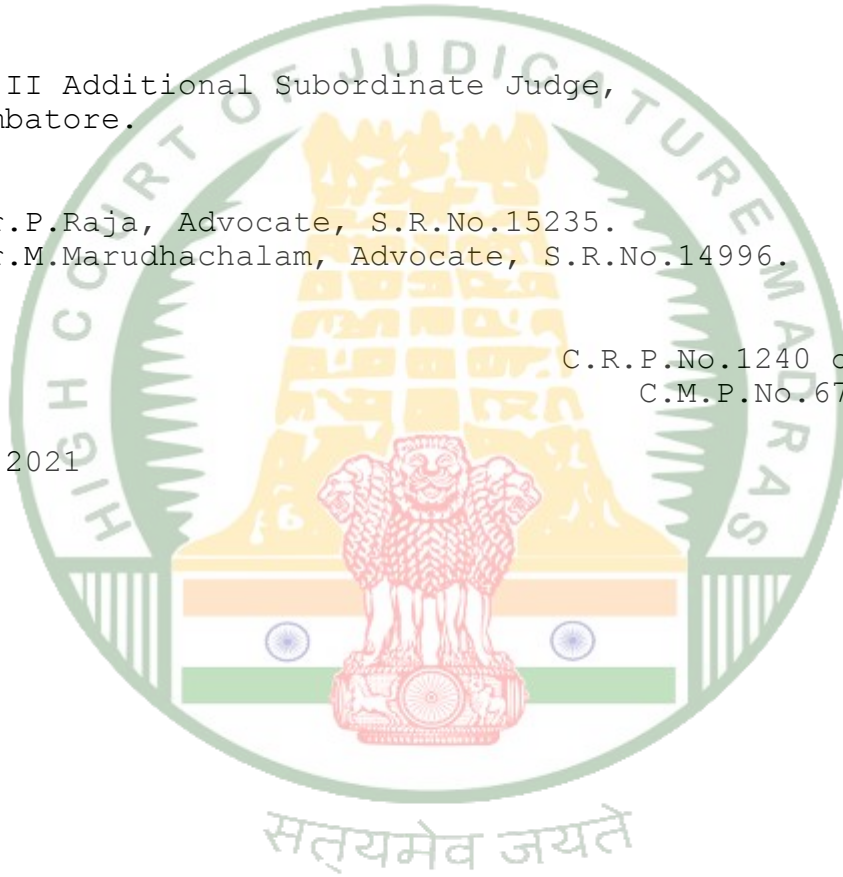
The II Additional Subordinate Judge,
Coimbatore.

+1cc to Mr.P.Raja, Advocate, S.R.No.15235.

+1cc to Mr.M.Marudhachalam, Advocate, S.R.No.14996.

C.R.P.No.1240 of 2020 and
C.M.P.No.6706 of 2020

GSM(CO)
CSR 30.03.2021



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