

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

The Hon'ble Mr.Justice Krishnan Ramasamy

CRP (NPD)No.1228 of 2017

and

C.M.P.No.5803 of 2017

Rajeswari

.. Revision Petitioner

vs.

Senthilkumar

..Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order passed in C.M.A.No.2 of 2016 on the file of Additional District Judge No.3, Dharapuram, Tiruppur District, dated 10.01.2017 partly allowing the I.A.No.40 of 2013 in H.M.O.P.No.54 of 2013 on the file of the Sub-Court, Udumalpet, dated 17.04.2014 and to set aside the same.

For Revision Petitioner - M/s. B.Gopalakrishnan

For Respondent - Mr.NThiagarajan

ORDER

The appellant in Civil Miscellaneous Appeal No.2 of 2016 on the file of Additional District Judge No.3, Dharapuram, Tiruppur District (First Appellate Court), is the revision petitioner herein.

2. The respondent/husband has filed a Petition for divorce, in H.M.O.P.No.54 of 2013, on the file of the Sub-Court, Udumalpet(trial Court), and the same is pending. In the said Petition for divorce, the revision petitioner/wife filed an Interlocutory Application in I.A. No.40 of 2013 seeking for interim maintenance, pending disposal of the Divorce Petition. The Trial Court disposed of the same with a direction to the respondent/husband to pay a sum of Rs.2000/- as interim maintenance to the revision petitioner. The said order was challenged by the revision petitioner/wife in C.M.A.No.2 of 2016. The said Appeal was partly allowed by the First Appellate Court, vide judgment, dated 10.01.2017, whereby, the maintenance amount awarded by the Trial Court was enhanced from Rs.2000/- to Rs.3500/-. Challenging the said order, dated 10.01.2017, the revision petitioner has preferred the present Civil Revision Petition.

2. Mr.B.Gopalakrishnan, the learned counsel appearing for the revision petitioner submitted that originally, the revision petitioner/wife made a claim of Rs.15,000/- per month towards interim maintenance, as she has a male child to be looked after to, and therefore, maintenance amount less than Rs.15,000/- will not be sufficient to meet out the monthly expenditures. Further, the learned counsel submitted that the respondent/husband is the owner of 12 acres of land, wherein, he has raised coconuts, and that would fetch him around a sum of Rs.2,00,000/- per month as income. Hence, the learned counsel prayed that without any difficulties, the respondent/husband can pay a sum of Rs.15,000/- per month as interim maintenance. However, this aspect was not considered by the First Appellate Court in a proper perspective. Therefore, the learned counsel prayed that the interim maintenance awarded by the First Appellate Court may be enhanced atleast to Rs.10,000/- and the Civil Revision Petition may be partly allowed.

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3. Per contra, Mr.N.Thiagarajan, the learned counsel appearing for the respondent/husband submitted that the respondent is the owner of land

only to an extent of 3.28 acres, and that apart, the entire extent of land has not been yielding the coconuts. Therefore, the respondent/husband is not in a position to pay a sum of Rs.15,000/- as claimed by the revision petitioner/wife. Further, the learned counsel submitted that, the revision petitioner has a major share over the family property, and from and out of the said property, she is earning a sum of Rs. 25,000/- per month. Therefore, the learned counsel submitted that, amount awarded by the First Appellate Court of Rs.3,500/- is just and fair and it does not warrant interference of this Court.

4. Heard the learned counsel for both sides and perused the materials available on record.

5. Originally, the Interlocutory Application was filed by the revision petitioner/wife seeking interim maintenance of Rs.15,000/- per month. The main contention of the revision petitioner is that the respondent/husband was owning 12 acres of coconut yielding grove, from and out of the same, the respondent is earning Rs.2,00,000/- per month as income. Whereas,

upon perusal of the counter affidavit by the respondent and on hearing the learned counsel for the respondent/husband, it appears that the respondent is entitled only to an extent of to 3.28 acres of land, and not 12 acres, and it would fetch him around Rs.2,00,000/- to Rs.3,00,000/- income per year, to earn the said income, the respondent needs to spend a lot of money as well. It is also admitted by both the parties that the respondent/husband is not deriving any other income, except, from the aforesaid agricultural income. In these circumstances, this Court is of the view that, it would be appropriate to fix a Rs. 5000/- towards interim maintenance to the revision petitioner/wife till the disposal of the Divorce Petition.

6. Accordingly, this Court is inclined to modify the interim maintenance awarded by the First Appellate Court from a sum of Rs.3,500/- to a sum of Rs.5,000/-. Therefore, the order dated 10.01.2017, passed by the first Appellate Court in C.M.A.No.2 of 2016 stands modified to the effect that the revision petitioner is entitled to receive a sum of Rs.5,000/- as interim maintenance till the disposal of the Petition for divorce. The revision petitioner is entitled for interim maintenance with effect from the

date of filing of the Application for Maintenance. This Court, therefore, directs the respondent/husband to pay the entire arrears of maintenance within 12 weeks from the date of receipt of copy of this order. In case, the respondent fails to pay the arrears of maintenance within the stipulated time, then, he has to pay the same together with 12% interest to the revision petitioner.

7. In the result, the Civil Revision Petition is partly allowed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

03.09.2021

Index: Yes/No
Speaking/Non-speaking Order
jd/sd

To

1. The III Additional District Judge, Dharapuram Court.
2. The Sub Court, Udumalpet.

Krishnan Ramasamy, J.,
jd/sd



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