

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.NPD.No.3666 of 2018
and CMP.No.20420 of 2018

Jegadeesan

..Petitioner

Vs.

Bharathi

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the petition and order passed on 11.08.2018 in EP.No.66 of 2017 in IA.No.47 of 2016 in HMOP.No.7 of 2014 on the file of Subordinate Court, Vaniyambadi

For Petitioner : Mr.Sekar G.K.

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed challenging the order passed on 11.08.2018 in EP.No.66 of 2017 in IA.No.47 of 2016 in HMOP.No.7 of 2014 on the file of Subordinate Court, Vaniyambadi, thereby ordered to attach a sum of Rs.18,000/- per month from his salary.

2. Though notice was served, no one appeared on behalf of the respondent before this Court in person or through pleader.

3. The petitioner is the husband and the respondent is the wife. The petitioner filed petition for divorce on the ground of cruelty in the year 2014 in HMOP.No.7 of 2014. While pending the divorce petition, the respondent filed interim maintenance petition and the same was allowed and directed the petitioner to pay a sum of Rs.4,000/- as monthly maintenance till the disposal of the HMOP. Even in the year 1999 itself, the respondent filed petition for maintenance under Section 125 of Cr.P.C. in MC.No.20 of 1999 on the file of the Judicial Magistrate-III, Vellore. In the said maintenance petition, the learned Magistrate ordered a sum of Rs.2,000/- to the respondent and Rs.2,000/- to minor child payable by the petitioner. Considering the said order, the court below ordered a sum of Rs.4,000/- to be paid by the petitioner herein to the respondent and totally, directed to pay a sum of Rs.6,000/- payable by the petitioner to the respondent herein. While being so, the petitioner failed to pay maintenance award amount and as such the respondent filed petition to execute maintenance order under Section 128 of Cr.P.C. in CMP.No.1755 of 2017 before the Judicial Magistrate-III, Vellore. Thereafter, the petitioner is continuously paying a sum of Rs.4,000/- to the respondent as well as his minor child.

4. It is also seen that the petitioner failed to comply the order passed by the Family Court and did not pay any interim maintenance as directed by the court below in divorce proceedings. Therefore, the respondent filed execution petition before the Family Court, in which the court below directed his employer to attach a sum of Rs.18,000/- per month from his salary and on the same day i.e. 11.08.2018, dismissed the divorce petition on the ground that the petitioner has not paid interim maintenance as directed by the court below in IA.No.47 of 2016. Therefore, the divorce petition is struck off and dismissed the OP.

5. Now the petitioner is continuously paying the monthly maintenance as ordered in the maintenance case filed under Section 125 of Cr.P.C. on the file of the Judicial Magistrate-III, Vellore. Admittedly, the interim maintenance was ordered by the Family Court only till the disposal of the divorce petition. Now the main HMOP itself is dismissed by the court below and the petitioner is also now continuously paying maintenance as ordered in the maintenance case to the respondent.

6. Considering the above facts and circumstances of the case, the order passed by the court below is liable to be set aside. Accordingly, this civil revision petition is allowed and the order passed on 11.08.2018 in EP.No.66 of 2017 in IA.No.47 of 2016 in HMOP.No.7 of 2014 on the file of Subordinate Court, Vaniyambadi is set aside. However, if the petitioner fails to pay monthly maintenance as awarded by the learned Judicial Magistrate under Section 125 of Cr.P.C., the respondent is at liberty to file appropriate petition to execute the same. Consequently, connected miscellaneous petition is closed. No order as to costs.

17.06.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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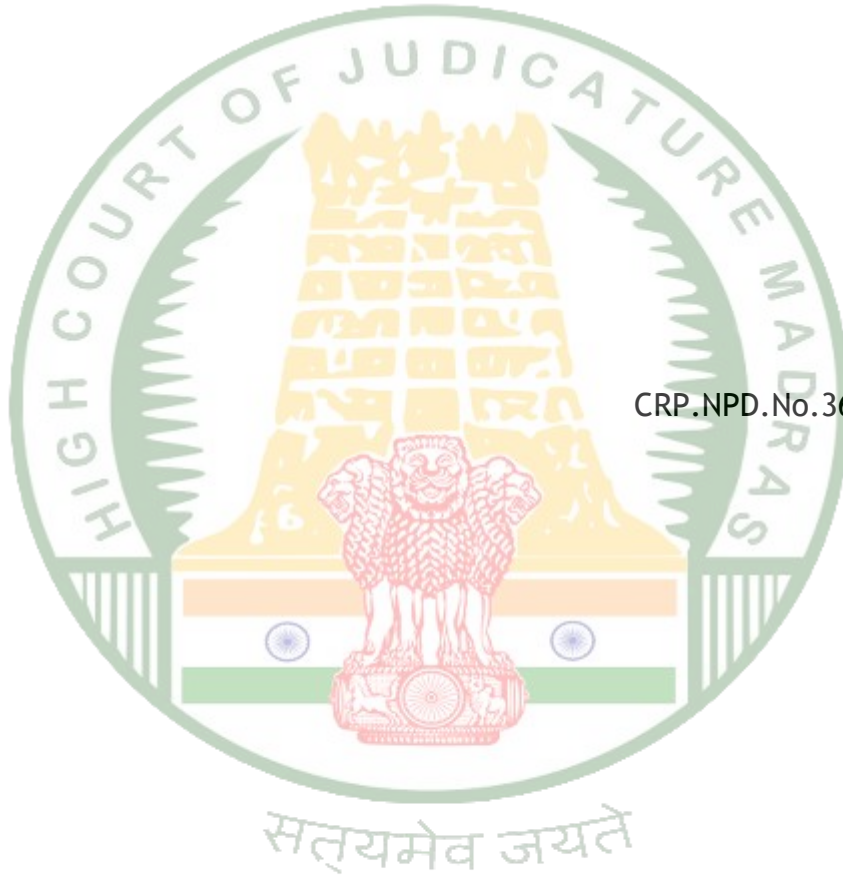
The Subordinate Court,
Vaniyambadi



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G.K.ILANTHIRAIYAN,J.

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CRP.NPD.No.3666 of 2018

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