



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1452 of 2018

And

Crl.M.P.No.16979 of 2018

M.Manipal

... Petitioner/Respondent

Vs.

N.S.Jayalakshmi

... Respondent/Petitioner

Prayer: Petition filed under Section 397 r/w Section 401 of Cr.P.C., seeking to set aside the order dated 21.10.2016 in M.C.No.551 of 2011 on the file of the 2nd Additional Family Court Judge at Chennai.

For Petitioner : Mr.M.Sathish Kumar

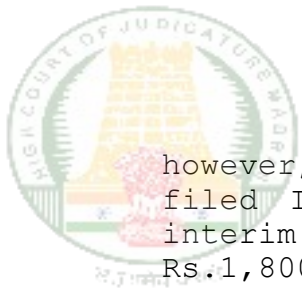
For Respondent : Mr.P.Anandan
for M/s.Majestic Law Firm

O R D E R

The petitioner has filed this petition seeking to set aside the order dated 21.10.2016 in M.C.No.551 of 2011 on the file of the learned II Additional Family Court Judge at Chennai.

2.The case of the petitioner is that the marriage between the petitioner and the respondent was solemnized on 03.06.2001 at Chennai as per the Hindu Rites and Customs. Thereafter, there was difference of opinion inbetween them and were living separately. The respondent filed M.C.No.551 of 2011 before the II Additional Family Court at Chennai, claiming a sum of Rs.15,000/- per month towards maintenance on the ground that she has no independent income of her own and she has to maintain herself. The said maintenance case was ordered exparte by awarding maintenance of Rs.5,000/- per month to the respondent. Aggrieved by the same, the petitioner has filed this revision.

3.The learned counsel appearing for the petitioner would submit that the respondent has not discharged her duty as a dutiful wife and on her own volition, she left the matrimonial home and started living separately. Thereafter, the petitioner filed F.C.O.P.No.554 of 2008 for restitution of conjugal rights,



however, without joining the matrimonial home, the respondent filed I.A.No.1711 of 2009 in F.C.O.P.No.554 of 2008 claiming interim maintenance and the respondent was awarded a sum of Rs.1,800/- per month as interim maintenance.

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4.The learned counsel appearing for the petitioner would further submit that thereafter, the respondent filed Execution Petition in E.P.No.34 of 2012 in I.A.No.1711 of 2009 and the petitioner's salary was attached from 07.06.2015 to 31.03.2017. However, without disclosing the above said proceedings, the respondent filed a separate maintenance case before the II Additional Family Court at Chennai, claiming a sum of Rs.15,000/- per month towards maintenance and the II Additional Family Court at Chennai also without ordering any notice to the petitioner has awarded a sum of Rs.5,000/- per month as maintenance to the respondent, which is not sustainable.

5.The learned counsel appearing for the petitioner would further submit that though the relationship between the petitioner and the respondent is not disputed, before passing an order it is necessary to serve notice to the petitioner. Without providing opportunity to the petitioner the exparte order was passed which is not sustainable and the same is in clear violation of principles of natural justice.

6.Heard the submission made by the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

7.Admittedly, exparte order was passed against the petitioner. The grievance of the petitioner is that already he filed F.C.O.P.No.554 of 2008 for restitution of conjugal rights, however, without joining the matrimonial home, the respondent filed I.A.No.1711 of 2009 in F.C.O.P.No.554 of 2008 claiming interim maintenance and the respondent was awarded a sum of Rs.1,800/- per month as interim maintenance. However, law is settled that even if interim maintenance is awarded in matrimonial dispute, it is not a bar for filing maintenance case.

8.The respondent is receiving interim maintenance as per Hindu Marriage Act. She is also entitled to receive maintenance as per Section 125 of Cr.P.C. Both the enactment are welfare enactment which will give social welfare. Hence, the respondent is entitled to receive maintenance under Hindu Marriage Act as well as under Section 125 of Cr.P.C. Further, the II Additional Family Court at Chennai has awarded a sum of Rs.5,000/- per month as maintenance to the respondent, which is just and reasonable considering the present cost of living. Hence, the relief sought for by the petitioner cannot be considered.



9. This revision is accordingly dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Judge,
Family Court at Chennai.

+1cc to Mr. Majestic Law Firm, Advocate, S.R.No.41961

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NMI (CO)
GN(17/09/2021)