

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	08.04.2021
Date of Judgment	01.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.223 of 2021****and****Crl.MP(MD)No.2327 of 2021**

R.Rajesh

: Petitioner/Petitioner/
Respondent

Vs.

1.Sharmila

2.R.Priya

3.R.Jyothika

: Respondents/Respondents/
Petitioners

Prayer: Criminal Revision filed under section 397 and 401 of the Criminal Procedure Code against the order passed in Crl.MP NO.147 of 2020 in MC No.65 of 2014, dated 04.02.2021 by the Family Court, Madurai.

For Petitioner : Mr.D.Sadiq Raja

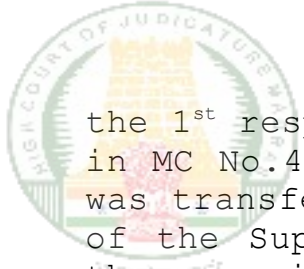
For 1st Respondent : Mr.V.Om Prakash

For R2 and R3 : No appearance

J U D G M E N T

This criminal revision is directed against order passed in Crl.MP No.147 of 2020 in MC No.65 of 2014, dated 04.02.2020 by the Family Court, Madurai.

2.The petitioner is the husband of the 1st respondent. The respondents 2 and 3 are their children. Due to matrimonial tiff, the 1st respondent herein filed a petition in MC No.65 of 2014 against the petitioner seeking maintenance for herself and two daughters for a sum of Rs.50,000/-. During the pendency of the said petition, the 1st respondent has filed another petition under section 12 of the Domestic Violence Act before the Additional Mahila Court (Magistrate Level), Madurai, in MC No.307 of 2014 seeking maintenance from the petitioner for the same cause of action. In the meantime, the petitioner paid Rs.1,73,220/- to the 1st respondent as maintenance in the above proceedings. Thereafter, on 20.02.2014, the 1st respondent informed that the 2nd respondent ~~advised him to go to the temple~~ and ceremony is going to be held at 23.02.2014 in the presence of family members. When he came down to Madurai to attend the function, he saw one Ashok kumar sharing the bed with



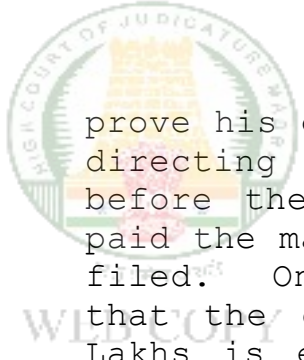
the 1st respondent. Hence, he filed a petition for divorce petition in MC No.422 of 2018 before the Family Court, Mysore and the same was transferred to the Family Court, Madurai, as per the direction of the Supreme Court and renumbered as HMOP NO.1075 of 2019 and the same is pending. Under these circumstances, MC No.65 of 2014 was set ex-parte, for the non appearance of the petitioner. The petitioner filed a set aside petition in CrI.MP No.91 of 2015 and the same was allowed with costs and subsequently, the petitioner paid Rs.84,000/- to the respondents as maintenance. Subsequently, the petitioner again set set ex-parte on 27.11.2015 for his non appearance. The petitioner filed petition in Cr.M.P No.147 of 220 in MC No.65 of 2014 to condone the delay of 1789 days in filing the set aside petition against the ex-parte decree passed on 27.11.2015 in MC No.65 of 2014. The said petition was allowed on payment of cost of Rs,8,00,000/- as interim maintenance by the petitioner to the respondents on or before 02.03.2021 and in default, this petition will stand dismissed. Aggrieved by the said order, the petitioner is before this court.

3.Heard the learned counsel appearing for the parties and perused the materials available on record.

4.The learned counsel appearing for the petitioner/respondent argued that on 27.11.2015, the petitioner/respondent was set ex-parte on 27.11.2015 and due to his illness, it is not possible for him to appear before the court, but he has not filed any set aside petition, but the court inadvertently restored the main petition and then at the instigation of the court, he filed set aside petition with delay, but the trial court passed the maintenance order without sufficient records and the order of the trial court is not and prays hat the civil revision has to be allowed.

5.On the other hand, the learned counsel appearing for the respondents/petitioners, it is argued that without any cause, the petitioner/respondent deserted his wife and for his non appearance, he was set ex-parte on 27.11.2015, but the trial court inadvertently restored the main case, even though there was no petition to set aside was filed by the petitioner/respondent and then, the mistake was rectified and the petitioner/respondent filed the petition to set aside the ex-parte order with delay condonation petition and no proof was filed to prove his illness and prays that the Civil Revision has to be dismissed.

6.The petitioner/respondent states that due to his illness, it is not possible for him to attend the court. To prove it, no document was filed. The petitioner/respondent was set ex-parte for the second time on 27.11.2015. For that, no petition was filed by the petitioner/respondent. But inadvertently, the trial court restored the main case and then the defects were rectified. But the trial court gave one more opportunity to the petitioner to



prove his defence and allowed the set aside petition on condition, directing the petitioner/respondent to pay a sum of Rs.8,00,000/- before the trial court. To prove that the petitioner/respondent paid the maintenance amount to his wife and child, no document was filed. On perusal of the order of the trial court, it reveals that the conditional order passed by depositing a sum of Rs.8 Lakhs is excessive. Hence, this court finds that the set aside petition was allowed and the conditional order passed by the trial court is modified to the effect that the petitioner shall deposit a sum of Rs.2,00,000/- before the trial court within a period of 4 weeks, instead of Rs.8,00,000/-.

7. Accordingly, this criminal revision is partly allowed. The impugned order, dated 04.02.2021 passed by the Family Court, Madurai, is modified to the effect that the petitioner shall pay a sum of Rs.2,00,000/- as interim maintenance to the respondents, within a period of four weeks from the date of receipt of a copy of this order, failing which the order of the trial court shall stand restored. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

The Family Court, Madurai.

Copy to

The Record Keeper, Criminal Section (Record)

Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.V.OMPRAKASH, Advocate (SR-20873[F] dated 01/07/2021)

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-21013[F] dated 02/07/2021)

Cr1.RC(MD)No.223 of 2021
01.07.2021