



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2021

CORAM

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THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.2153 of 2017 (PD)
and
C.M.P (MD) .No.10624 of 2017

Homie Kanaga Bhabha

...Petitioner/Respondent/Respondent

-Vs-

Anitha

.. Respondent/Petitioner/Petitioner

PRAYER: Petition filed under Article 227 of Constitution of India, seeking a direction to the Subordinate Judge, Sivakasi to dispose of I.A.No.141 of 2017 in H.M.O.P.No.15 of 2013 along with main H.M.O.P.No.15 of 2013.

For Petitioner : Ms.Lakshmi Gopinathan
For M/s.Polax Legal Solutions

For Respondent : Mr.N.Dilip Kumar

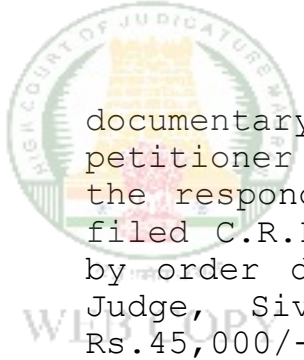
ORDER

This Civil Revision Petition has been filed seeking a direction to the learned Sub Judge, Sivakasi to dispose of I.A.No.141 of 2017 in H.M.O.P.No.15 of 2013 along with main H.M.O.P.No.15 of 2013.

2.The brief facts leading to the filing of this revision petition are as follows:

(a) The petitioner and the respondent are husband and wife. The marriage between them was solemnized on 14.09.2008 at Sivakasi as per Hindu Rites and Caste Custom, and the same was registered by the Registrar of Hindu Marriage, Sivakasi on 17.09.2008. Subsequently, they went to Australia, lived their happily and blessed with two children. After the birth of the second child in India on 10.02.2011, there was a difference of opinion between the petitioner and the respondent. According to the respondent, the petitioner did not take back her along with children to Australia. Hence, the respondent filed H.M.O.P.No.15 of 2013 before the Sub Court, Sivakasi for restitution of conjugal rights.

(b) Thereafter, the respondent filed I.A.No.2 of 2014 seeking maintenance. The Court below, after appreciating the oral and



documentary evidence and other connected documents, directed the petitioner to pay a sum of Rs.1,50,000/- per month as maintenance to the respondent and children. Aggrieved by the same, the petitioner filed C.R.P.(MD).No.2567 of 2017 before this Court and this Court, by order dated 07.02.2017, modified the order of the learned Sub Judge, Sivakasi and directed the petitioner to pay a sum of Rs.45,000/- p.m. as maintenance and also directed the learned Sub Judge to dispose of H.M.O.P.No.15 of 2013 within a period of three months. Because of long pendency, the arrears amount piled up to Rs.17,00,000/- and above. Hence, the respondent filed an application in I.A.No.141 of 2017 seeking a direction to the petitioner to pay arrears amount within a stipulated time, failing which the defence raised by the petitioner may be struck down. The petitioner has filed counter affidavit before the Court below stating that he would pay arrear amount by applying loan and that he will continue to pay the maintenance amount. Thereafter, the petitioner filed H.M.O.P.No.234 of 2017 for divorce on the file of the Sub Court, Sivakasi and at the same time, the petitioner has filed this Civil Revision Petition seeking a direction to the Court below to dispose of I.A.No.141 of 2017.

3. When the matter came up for admission on 21.11.2017, this Court has granted an order of Interim stay on condition that the petitioner shall continue to pay a sum of Rs.1,00,000/- p.m. (ie., Rs.45,000/- towards maintenance and the balance amount for arrears of maintenance amount) to the respondent until further orders, failing which the interim stay granted shall stand automatically be vacated without further reference to this Court. Thereafter, in view of the submission of the learned counsel for both sides that there is a possibility of settlement and also considering the facts and circumstances of the case, this Court made strenuous efforts to settle the matter amicably. But, it ended in vain.

4. Today, when the matter came up for hearing, the learned counsel appearing for the petitioner submitted that she has given change of vakalath and therefore, the case may be adjourned to some other day. At this juncture, the learned counsel for the respondent submitted that the arrears of maintenance piled up more and the petitioner did not obey the order of this Court dated 21.11.2017 and pay the arrears of maintenance amount regularly. He would further submit that as the petitioner did not pay the maintenance amount regularly, this petition may be dismissed, in the light of the decision of the learned Single Judge of this Court in **Hema Vs. Parthasarathy**, reported in **2002 (4) CTC 17**.

5. Having argued at length and having dragged the matter for years together under the guise of settlement, it is not proper on the part of the petitioner now to seek adjournment stating that change of Vakalath has been given. It is nothing but a clear abuse of process of the Court. The attitude of the petitioner is condemnable. Having failed to pay maintenance as ordered by the Court, the petitioner is not entitled to get the relief sought for in the petition.



6. In the decision in **Hema Vs. Parthasarathy, reported in 2002 (4) CTC 17**, a learned Single Judge of this Court has held in paragraph No.14 as follows:

"14.Hence, the legal position is that if the husband fails to make payment of maintenance or litigation expenses, as ordered by the Court, then the wife can file an application praying the Court to dismiss the petition or strike off the defence, as the case may be. In such case, the Court will consider the same and dispose it off on merits. In case, if the Court comes to the conclusion that the application has to be allowed, then it should not straight away pass an order but give another opportunity giving reasonable time, minimum of three weeks, so that the husband, if he desires to make payment, can do so. Only on his failure to make the payment, the original petition can be dismissed or defence can be struck off.

7. Here, in this case, it is needless to say that the petitioner has been given several opportunities to pay the maintenance amount to the respondent, but he has not utilized the same. However, it is for the Court below to decide the merits of I.A.No.141 of 2017 based on the above decision forthwith.

8. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

1.The Sub Judge, Sivakasi

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-3161[F] dated 03/02/2021)

C.R.P.(MD) No.2153 of 2017
and C.M.P(MD).No.10624 of 2017

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MR(11.05.2021) 4P 4C