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C.R.P.PD.Nos.1716 and 1727 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2022

PRONOUNCED ON : 14.10.2022

C O R A M :

The Hon'ble Mrs. Justice **J. NISHA BANU**

C.R.P(PD).Nos.1716 and 1727 of 2016

and

CMP.Nos.9145 and 9197 of 2016

Perumal Udaiyar

... Appellant/Petitioner/Petitioner
in both C.R.P's

Vs.

Dhanalakshmi

...Respondent/Respondent/Respondent
in both C.R.P's

PRAYER in C.R.P(PD).No.1716 of 2016: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the judgment and decretal order dated 01.04.2016 in E.P.No.58 of 2014 in O.S.No.227 of 2011 on the file of the Principal District Munsif, Kallakurichi.

PRAYER in C.R.P(PD).No.1727 of 2016: Civil Revision Petition filed under Section 115 of Code of Civil Procedure against the judgment and decretal order dated 15.02.2016 in I.A.No.15 of 2015 in unnumbered A.S. Of 2015 on the file of the Subordinate Court, Kallakurichi.



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For Petitioner : Mr.V.Ragavachari
(both C.R.P's)

For Respondent : M/s.R.Meenal
(both C.R.P's)

COMMON ORDER

CRP.No.1716 of 2016 has been filed against the judgment and decree dated 01.04.2016 in E.P.No.58/2014 on the file of Principal District Munsif, Kallakurichi, in O.S.No.277 of 2011.

2. O.S.No.277 of 2011 has been filed by the respondent/wife/plaintiff seeking maintenance of Rs.1500/- as maintenance amount to her and also to create charge on the property of her husband towards her additional expenses. In the said suit, it has been ordered that the husband/revision petitioner herein has to pay Rs.1000/- as monthly maintenance to plaintiff/respondent and also by creating charge over the property of husband.



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3. Thereafter, EP.58 of 2014 has been filed by the wife praying the court to issue direction to the respondent/husband to pay the entire arrears of maintenance amount, failing which, to send him to civil prison.

4. In the said E.P., the respondent/husband filed counter resisting the averments made in the petition and also objected the calculation worked out by the petitioner. Further, the respondent/husband prayed to reserve his right for raising objections on account of want of certain documents in connection with O.S.No.1053 of 2004 which was sought for by him.

5. The Executing Court on analysis of averments, counter and the judgment passed in O.S.No.277 of 2011, held that in order to give one more opportunity to the respondent/husband to make the payment to the petitioner/wife, partly allowed the EP and directed the respondent/husband to pay Rs.36,719/- directly to the wife, failing which, the respondent would



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undergo detention in civil prison. For payment of arrears of maintenance, the case in EP was adjourned to 13.04.2016. As against the said order passed in E.P.No.58 of 2014, CRP.No.1716 of 2016 has been filed by the revision petitioner/husband raising the main ground that he is not having sufficient means to pay the amount as directed by the EP court.

6. In so far CRP.No.1727 of 2016 is concerned, it has been filed by the revision petitioner/husband as against the order passed in I.A.No.15 of 2015 in unnumbered A.S., filed by the husband/appellant as against the decree and judgment passed in O.S.No.277 of 2011 dated 28.11.2013, which judgment is passed in favour of the wife, ordering maintenance of Rs.1000/- per month to be payable by the husband.

7. The revision petitioner/husband aggrieved by the quantum of monthly maintenance granted in the suit filed by the wife, filed the petition in I.A.No.15 of 2015 to condone the delay of 302 days in filing appeal.



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8. The reasons set out for filing appeal is that he is a senior citizen and not having any income. Due to misplacement of the judgment copy, he could not file appeal within the period of limitation and the delay is not wilful.

9. The learned Judge, dismissed the said I.A., holding that if one copy is misplaced, the petitioner could have got another copy from the court and that the wife has filed E.P., and the same is pending and in such circumstances, with a view to stall the E.P., proceedings, the appeal with delay condonation petition has been filed, but the reasons for the delay is not convincing and sufficient.

10. The learned counsel for the petitioner would submit that whenever a Court of Law before passing an order for arrest and detention of the person concerned must be satisfied that he despite having sufficient



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means has with a malafide intention, evades payment. In this regard, the learned counsel relied on a judgment of the Honourable Supreme Court in ***Jolly George Vargese and another V. The Bank of Cochin (1980) 2 SCC 360***. wherein, it is held that earlier income of judgment-debtor is immaterial and that the court should enquire his present financial position.

11. On the other hand, learned counsel for the respondent would submit that the petitioner failed to make the monthly maintenance and also not complied with the direction of the EP court till date, but filed this CRP, only to drag on the proceedings. The revision petitioner's application to condone the delay in filing the appeal also has been dismissed by the court below and in such circumstances, the revision petitioner has filed the present CRPs only to drag on the proceedings without any valid reason.

12. Heard and perused the records.



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13. By an order dated 15/02/2016, learned Judge, dismissed the revision petitioner's I.A.No.15 of 2015 seeking to condone the delay in filing appeal against the decree and judgment in O.S.No.277 of 2011. Further by order dated 01.04.2016, the revision petitioner/husband was directed to pay the modified maintenance amount along with arrears failing which detention in civil prison has been ordered. So it is clear that the order passed in O.S.No.227 of 2011 has become final. Further, it becomes the moral and legal obligation of the petitioner/husband to maintain his wife. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution and not as a punishment to the other spouse.

14. The petitioner has not been able to point out any perversity in the impugned orders. The petitioner is duty bound to pay the maintenance



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amount to his wife. No material has been placed on record to show that the respondent is able to sustain herself. In view of the above, this Court does not find any infirmity with the impugned orders. Accordingly, the revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

nvsri

14.10.2022

To

1. The Principal District Munsif, Kallakurichi.
2. The learned Subordinate Judge, Kallakurichi.
3. The Section Officer,
V.R.Section, High Court of Madras.



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J.NISHA BANU,J.

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