



C.R.P.No.711 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 20.06.2023

Delivered on 01.09.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.711 of 2021
and C.M.P.No.5941 of 2021

Ruthramurthy

...1st Respondent/Petitioner

-Vs-

1.Sathiya Priya

2.Minor Gnaneswaran

3.Minor Dharaneeswaran

...Petitioners 1 to 3/
Respondents 1 to 3

4.District Collector,
Collectorate, Salem-7.

...2nd Respondent/4th Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India, against the order in P.O.P.No. 3 of 2013 dated 22.11.2019 on the file of the learned Family Court Judge, Salem.

For Petitioner : Mr.S.P.Yuaraj

For R1 to R3 : Mr.R.Nalliyappan

For R4 : Mr.V.Jeevagiridharan
Additional Government Pleader (CS)



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ORDER

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This Civil Revision Petition is filed by the Revision Petitioner, who is the 1st Respondent in P.O.P.No.3 of 2013 and the Defendant in O.S.No.35 of 2019.

2. It is the case of the Revision Petitioner that his wife had filed P.O.P.No.3 of 2013 to file the suit as *forma pauperis* and the suit had been filed seeking past maintenance of Rs.16,20,000/-. The Petitioners in P.O.P.No.3 of 2013 had stated that they had to be permitted to file the suit as Indigent Persons under Order XXXIII, Rule 1 of CPC. The Court ordered an enquiry, to be conducted by the District Collector of the district concerned. In this case, no report was obtained by the learned Family Court Judge, Salem, and she had passed an order permitting the Petitioners to conduct the case as Indigent Persons in P.O.P.No.3 of 2013 as per order dated 22.11.2019. In spite of the counter filed by the Revision Petitioner as Respondent/Defendant stating that the 1st Petitioner in P.O.P.No.3 of 2013 was employed at L.R.N. Motors, Salem, and she was earning salary, also she had jewels and two wheelers with registration number, which were furnished by the Petitioners as Respondents in the Civil Revision Petition.



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During an enquiry, the 1st Respondent was examined as R.W.1. Exhibits were marked as Ex.R1 is the details of the employees of L.R.N. Motors, Salem, in which the 1st Petitioner is stated to be working, Ex.R2 is the copy of the Registration Certificate of Motorcycle and Ex.R3 series are the photos and C.D containing the pictures of the 1st Petitioner working in a private concern were marked.

3.The learned Counsel for the Revision Petitioner contended that the learned Family Court Judge, Salem, had not ordered enquiry to be conducted by the Revenue Officials regarding the status of the Petitioner and had allowed the Petition. Aggrieved by the same, he had filed this Civil Revision Petition.

4.When the learned Counsel for the Respondent was about to submit his arguments, the learned Counsel for the Revision Petitioner/husband filed additional typed set as proof of his claim that the Respondents in the Civil Revision Petition, the wife, had been in employment at LRN Motor and filed a photostat copy of the registration copy of the two wheeler, wherein the name of the wife is found. Therefore, it is the submission that



she had been in employment, was earning income, and owned a two-wheeler. Therefore, her claim that she is an Indigent Person cannot at all be accepted.

5.Mr.R.Nalliyappan, learned Counsel for Respondents 1 to 3 vehemently objected to the submission of the learned Counsel for the Revision Petitioner. The learned Counsel submitted that the Petitioner as Indigent Person was unable to pay Court fee. Therefore, the Petition was filed as P.O.P.No.3 of 2013. Therefore, the order passed by the learned Family Court Judge, Salem, was a well-reasoned order and does not warrant any interference.

6.The learned Counsel for the Respondents invited the attention of this Court to the observation of the learned Family Court Judge, Salem, which reads as follows:

“8.It is admitted that the 1st Petitioner is the wife and Petitioners 2 and 3 are the minor sons of the 1st Respondent. It is also admitted that the 1st Petitioner and the 1st Respondent are residing separately from 2009 and that the F.C.O.P.No.128/2011 filed by the 1st Petitioner for Restitution of Conjugal Rights was dismissed and F.C.O.P.No.114/2011 filed by the 1st Respondent for divorce was allowed. Whether the Petitioners are entitled



to relief of maintenance is the issue to be decided in the suit and the suit cannot be decided in this Petition. Whether the Petitioners are entitled to file the suit as Indigent Persons is the only issue to be decided in this Petition. Though the 1st Petitioner is stated to be working in a Garments Company in the counter filed by the 1st Respondent, no documents produced by the 1st Respondent to show that the 1st Petitioner was employed and earning in 2013 at the time of filing of this Petition. Ex.R2 is also the Registration Certificate of the Motorcycle in the name of the 1st Petitioner purchased in the year 2015. The 1st Petitioner has stated in her cross-examination that the Motor Cycle was purchased by her father in her name. Further from Ex.R1 and Ex.R3, the actual period of employment and earnings of the 1st Petitioner cannot be decided/ The Petitioners have sought for past maintenance of Rs.16,20,000/- for which Court Fees of Rs.1,21,500.50 has to be paid. No proper evidence adduced by the 1st Respondent to show that the Petitioners were capable of paying the above Court Fees at the time of filing of this Petition in 2013. The claim of the Petitioners that they have no means to pay the Court Fees for the relief sought in the plaint is acceptable. So the Petitioners are permitted to file the suit as In forma Pauperis.”

7.Also, the reported ruling of the Hon'ble Supreme Court in the case of ***Rana Nahid v. Sahidul Haq Chist*** reported in **2020 7 SCC 657**.

“50.It is important to note that Section 20 of the Family Courts Act, with its non obstante clause gives the provisions of the Family Courts Act overriding effect, over any other law, which would include the 1986 Act for Muslim Women. The Family Courts Act is to have effect, notwithstanding anything inconsistent therewith, contained in any other law, for the time being in force, or in any instrument having effect, by virtue of any law other than the Family Courts Act.”



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8.Learned Counsel for the Respondents submitted that the Civil Revision Petition is to be dismissed in the light of the order passed by the learned Family Court Judge, Salem, as having no merits and this Court may direct the Revision Petitioner to pay arrears of maintenance within a reasonable time.

9.Point for consideration:

Whether the order passed by the learned Family Court Judge, Salem, allowing the Respondent/wife in this Civil Revision Petition as Indigent Person in P.O.P.No.3 of 2013 dated 22.11.2019 was without following the due procedures under Order XXXIII Rule 1 of CPC?

10.On consideration of the rival submission and on perusal of the Petition in P.O.P.No.3 of 2013 the counter filed by the Respondent in P.O.P.No.3 of 2013 and the order passed by the learned Family Court Judge, Salem, it is found that before conducting the enquiry, the learned Family Court Judge, Salem, ought to have called for a report from the District Collector. It is because the District Collector, as the Head of the Revenue Department in the District, has proper machinery to conduct enquiry down the line in the hierarchy of the Revenue Department. From the Collector to the District Revenue Officer, from the District Revenue



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Officer to the Revenue Divisional Officer, from the Revenue Divisional Officer to the Tahsildar, from the Tahsildar to the Revenue Inspector, and from the Revenue Inspector to the VAO of the village concerned. Down the hierarchy, there are officials who are aware of the details of the property and the economic status of the person against whom enquiry was ordered by the Collector on the basis of the report sought by the Court to arrive at the conclusion whether the person who claims exemption from payment of Court fees was originally an Indigent Person. That is why under Order XXXII of Code of Civil Procedure, the District Collector of the District is impleaded as a proper and necessary party in the petition seeking exemption from payment of Court fees. Before ever receiving a report from the District Collector, the learned Family Court Judge, Salem, had conducted enquiry and passed orders. It is found that due procedures under Order XXXIII had not been followed, as the Court does not have the machinery to conduct enquiry in the local area. Whereas the District Collector has machinery to conduct enquiry in the local area regarding the economic status of the person who seeks exemption from payment of the Court fees on the ground of poverty. Before receiving such a report, the learned Judge had arrived at the conclusion that the Petitioner in



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P.O.P.No.3 of 2013 is an Indigent Person who has not followed the mandatory procedure. It is not a proper enquiry as per Order XXXIII, Rule-1 of the Code of Civil Procedure. Therefore, the order passed by the learned Family Court Judge, Salem, in P.O.P.No.3 of 2013 dated 22.11.2019 is to be set aside.

11.The learned Family Court Judge, Salem, is directed to hold a fresh enquiry after following the due procedure, ordering an enquiry through the District Collector and obtaining a report from the District Collector. Only after such a report, the learned Judge, shall conduct enquiry and pass order. The learned Judge is directed to dispose of P.O.P.No.3 of 2013 within a reasonable period of three months from the date of receipt of the copy of the order.

12. In the light of the above discussion, the point for consideration is answered against the Revision Petitioner and against the Respondents. The order passed by the learned Judge, Family Court, Salem in P.O.P.No.3 of 2013, dated 22.11.2019 is to be set aside as the learned Judge has not followed due procedures under Order XXXIII, Rule 1 of CPC.



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In the result, this **Civil Revision Petition is allowed.** The order passed by the learned Judge, Family Court, Salem, in P.O.P.No.3 of 2013 dated 22.11.2019 is set aside. The subject matter is remanded back to hold enquiry afresh after following the due procedures.

01.09.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

- 1.The Family Court, Salem.
- 2.The District Collector,
Collectorate, Salem-7.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

**Order made in
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