



C.R.P(MD)No.760 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD)No.760 of 2019
and C.M.P.(MD) No.4631 of 2019

N. Ratna @ Raji ...Revision Petitioner/Petitioner/
Petitioner/Respondent

/Vs./

R.Kannan ...Respondent/Respondent/
Respondent/Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the docket order made in unnumbered E.P.No... of 2018 in I.A.No.99 of 2015 in H.M.O.P.No.79 of 2018 on the file of the Family Court Judge, Nagercoil and set aside the same.

For Petitioner : Mr.C.Kishore

For Respondent : Mr.S.C.Herold Singh



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ORDER

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This Civil Revision Petition has been filed aggrieved by the docket order dated 18.09.2018 made in unnumbered E.P.No. --- of 2018 in I.A.No.99 of 2015 in H.M.O.P.No.79 of 2018 on the file of the Family Court Judge, Nagercoil.

2. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondent.

3. The learned counsel for the petitioner submits that the petitioner and the respondent are wife and husband. Initially, the respondent herein filed H.M.O.P.No.56 of 2015 on the file of the 1st Subordinate Judge, Nagercoil, for divorce and while transferring the case to the Family Court, Nagercoil, it was re-numbered as H.M.O.P.No.79 of 2018.

4. The learned counsel for the petitioner further submits that during the pendency of the divorce petition, the petitioner filed



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I.A.No.99 of 2015 for interim alumni and the same has been allowed on 14.03.2018 directing the respondent herein to pay a sum of Rs.20,000/- per month towards interim alumni, Rs.2,000/- towards transport expenses and Rs.15,000/- towards litigation expenses. Thereafter, H.M.O.P.No.79 of 2018 was dismissed for non-prosecution by order dated 03.05.2018.

5. The learned counsel for the petitioner also submits that the petitioner filed execution petition to execute the order dated 14.03.2018 in I.A.No.99 of 2015. The trial court, without even numbering the said execution petition, dismissed the same by its docket order dated 18.09.2018 holding that it is not maintainable on the ground that the main H.M.O.P itself is dismissed for non-prosecution on 03.05.2018 and therefore, the petitioner is not entitled for the relief as prayed in the execution petition.

6. The learned counsel for the petitioner further contends that till the date of disposal of H.M.O.P.No.79 of 2018 i.e on



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03.05.2018, the interim maintenance order passed by the learned 1st Additional Subordinate Judge, Nagercoil, in I.A.No.99 of 2018 dated 14.03.2018 is in existence and as such, the petitioner is entitled for seeking execution of the order dated 14.03.2018 in I.A.No.99 of 2018 and the order of the court below holding that the execution petition is not maintainable is contrary to law and also the settled principles. Challenging the said order passed on 18.09.2018 in an unnumbered execution petition, the petitioner is before this Court.

7. The learned counsel for the respondent contends that as the original petition filed in H.M.O.P.No.79 of 2018 was dismissed for non-prosecution, the order dated 14.03.2018 in I.A.No.99 of 2015 is not an executable order and as such, the court below has rightly dismissed the execution petition filed by the petitioner and interference of this Court is not required in this revision.



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8. Having heard the submissions made on either side and

on a careful examination of the materials available on record, it appears admittedly H.M.O.P.No.79 of 2018 was dismissed on 03.05.2018 for non-prosecution. But, before that, in I.A.No.99 of 2015, the court below passed an order dated 14.03.2018 granting interim maintenance and other expenses towards the petitioner. In my considered view, the petitioner is entitled for fruits of the order dated 14.03.2018 passed in I.A.No.99 of 2015 though the main H.M.O.P was dismissed for non-prosecution. The opinion of this Court is fortified by the authorities relied on by the learned counsel for the petitioner, which are extracted herein under:

1) In M.Kanagaraj Vs. Jeeva and another reported in **(2006)4 MLJ 569**, wherein, it is held as follows:

"In view of the settled legal position, it could be safely concluded that an order passed on an application under Section 24 of the Hindu Marriage Act could be executed and the fruits of the order could be recovered even after the disposal of the main petition".



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2)In **B.M.Muniratnam Naidu Vs. Shantamma** reported in **AIR 1971 Mys.25**, a Division Bench of Mysore High Court held as extracted herein under:

“It is clear from a reading of this section that maintenance and expenses of litigation could be ordered to be paid to the wife or husband, as the case may be, during the pendency of the proceeding. This provision has been made by the Legislature to see that if the husband or the wife is to contest an application under any of the provisions of this Act and if he or she has no means for his or her maintenance or to meet the cost of the litigation, the other spouse should be ordered to maintain the indigent spouse and also pay the expenses of the litigation. This has been done on considerations of public policy. When once an order has been passed under this section no matter what happens to the petitions thereafter, the liability to pay maintenance and expenses of the litigation in respect of the period during which the proceedings were pending, cannot be avoided. The subsequent dismissal of the petition does not exonerate the liability already incurred.”

3) In **Mohan Lal Vs. Smt.Kamlesh** reported in **AIR 1984 P & H 332** the question that came for consideration was, whether an application under Section 24 of the Hindu Marriage Act could be proceeded with when the main petition



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itself has been disposed, of and whether any order could be passed after the disposal of the main petition. In that case, application for interim maintenance and litigation expenses was filed. But the same was not disposed of. After the disposal of the main petition, the wife wanted the interim application to be proceeded with. The jurisdiction of the Court to pass an order under Section 24 of the said Act was considered. A Division Bench of that Court, after overruling the judgment of a learned single Judge of that Court, held thus:

"The object of enacting Section 24 of the Act is that an indigent spouse should not suffer during the pendency of the proceedings because of his/her poverty. It is the duty of the court to decide such an application expeditiously so that the indigent spouse is not handicapped because of want of funds. However, if the application under Section 24 is not decided during the pendency of the main petition on account of dilatory tactics of the other spouse or for some unforeseen circumstances, the whole purposes of the section stands frustrated in case it is dismissed on the ground that after the decision of main petition it does not survive. Therefore, even if the main, petition is decided finally, the application under Section 24 which is pending decision can continue. Similarly a revision petition filed against an order under Section 24 continue in spite of disposal of the main petition".



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4) In R.Kuppusamy Vs. Kanagalakshmi reported in **1997 (III) CTC 442**, this Court held as extracted herein under:

"In view of the settled legal position, it could be safely concluded that an order passed on an application under Section 24 of the Hindu Marriage Act could be executed and the fruits of the order could be recovered even after the disposal of the main petition".

9. In view of the settled preposition of law, in my considered view, the court below committed an error by dismissing the execution petition filed by the petitioner even without numbering the same, holding that it is not maintainable, which is unreasonable and illegal. As such, the docket order dated 18.09.2018 passed by the court below is liable to be set aside.

10. Accordingly, the docket order dated 18.09.2018 made in unnumbered E.P.No. --- of 2018 in I.A.No.99 of 2015 in H.M.O.P.No.79 of 2018 on the file of the Family Court Judge, Nagercoil, is hereby set aside. The matter is remanded back to the Family Court, Nagercoil, for fresh consideration and to pass orders



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afresh after hearing both sides.

11. In fine, this Civil Revision Petition is allowed.

12. No costs.

13. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
CM

To,

The Family Court Judge,
Nagercoil.



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BATTU DEVANAND, J.

CM

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