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C.R.P(MD)No.1610 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1610 of 2023

and

C.M.P(MD)No.7886 of 2023

Sathish

... Petitioner/Respondent/
Petitioner

Vs.

Seetha

... Respondent/Petitioner/
Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 10.03.2023 passed by the Principal Sub-Court, Pudukottai, in I.A.No.214 of 2021 in H.M.O.P.No.60 of 2020.

For Petitioner
For Respondent

:Mr.T.Lenin Kumar
:No appearance

ORDER

This civil revision petition is filed against the order dated 10.03.2023 passed in I.A.No.214 of 2021 in H.M.O.P.No.60 of 2020 by the Principal Sub-Court, Pudukottai.



2. According to the revision petitioner/defendant, the marriage between the petitioner and the respondent was solemnized on 26.06.2013.

Due to some matrimonial dispute, the petitioner/husband filed a petition in H.M.O.P.No.174 of 2017 before the Sub-Court, Trichy, for divorce. Thereafter, the said petition was transferred to Sub-Court, Lalgudi and renumbered as H.M.O.P.No.188 of 2018. Pursuant to which, the respondent/wife filed Tr.C.M.P(MD)No.505 of 2019, seeking transfer the H.M.O.P from the Sub-Court, Lalgudi to the Sub-Court, Pudukottai. The said Tr.C.M.P, was ordered and the H.M.O.P was transferred from Sub-Court, Lalgudi to the Sub-Court, Pudukottai. Further, there was a direction to dispose the divorce petition within a period of six months from the date of receipt of a copy of this order. Thereafter, the said petition was renumbered as H.M.O.P.No.60 of 2020 on the file of the Principal Sub-Court, Pudukottai. In such circumstances, the respondent/wife filed an application in M.C.No.6 of 2022 before the District Munsif cum Judicial Magistrate, Thirumayam, for maintenance. Again, the petitioner/husband filed transfer petition in Tr.C.M.P.No.129 of 2023 before the Principal District and Sessions Judge, Pudukottai, to transfer the maintenance case from the file of the District Munsif-cum-Judicial Magistrate, Thirumayam to any other Judicial Magistrate Court in Pudukottai District.



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3.While so, on 12.01.2023, when the transfer petition came up for hearing, the learned Principal District and Sessions Judge, Pudukottai, decided the maintenance petition and awarded a sum of Rs.7,000/- as maintenance to the respondent and her children. Again, the respondent/wife filed two separate applications in I.A.Nos.213 and 214 of 2021 in H.M.O.P.No.60 of 2020 seeking for litigation expenses of Rs.1,00,000/- and for interim maintenance of Rs.20,000/-. The learned Principal Sub Judge, Pudukottai, without considering the earlier order passed in the maintenance petition, awarded maintenance of Rs.10,000/- to the respondent on 10.03.2023. Aggrieved by which, the present civil revision petition is filed.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5.On perusal of the records and the orders passed by the Court below and upon considering the submissions made by the learned counsel for the petitioner, it is seen that the learned Principal Sub-Judge, Pudukottai, while passing the order of maintenance in the applications filed by the respondent/wife, ought to have considered the previous order passed by the learned Principal District and Sessions Judge, Pudukottai.



6.The judgment referred to by the learned counsel appearing for the revision petitioner is squarely applicable to the present case. The Hon'ble Apex Court in the case reported in **2021(2)SCC 324**, wherein it was held that:

“(a)Issue of overlapping jurisdiction

128.To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the Country. We direct that:

128.1.(1)Where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequence proceeding.

128.3(iii) If the order passed in the previous proceeding(s) required any modification or variation, it would be required to be done in the same proceeding.”

Therefore, the respondent/wife ought to have disclosed the previous proceedings and the order passed therein in subsequent proceedings and ought to have approached the court which had already passed an order in



respect of maintenance, if required for any modification or variation.

Without adopting such procedure, the respondent/wife has filed another application for maintenance, which is an abuse of process of law.

7. According to the revision petitioner, the said amount of Rs.7,000/- was fixed by the trial Court only with the consent of the parties, the respondent/wife agreed to get a sum of Rs.7,000/- as maintenance in the proceedings on the file of the Principal District and Sessions Judge, Pudukottai. Moreover, it is also brought to the knowledge of this Court that without an affidavit of disclosure of assets and liabilities as per the guidelines of the Hon'ble Supreme Court, the learned Principal Subordinate Judge, Pudukottai, has awarded the maintenance amount, which is in violation of the judgment of the Hon'ble Apex Court rendered in the aforesaid case.

8. Considering the above facts, the order dated 10.03.2023 passed in I.A.No.214 of 2021 in H.M.O.P.No.60 of 2020 by the learned Principal Sub Judge, Pudukottai, is hereby set aside and the petitioner is directed to continue to pay a sum of Rs.10,000/-(Rupees Ten Thousand only) as interim maintenance, awarded by the learned Principal District and Sessions Judge, Pudukottai, which is subsequently enhanced by this Court vide order dated



10.07.2023. The petitioner shall continue to pay the maintenance amount of Rs.10,000/- per month to the respondents on or before 10th day of every succeeding English Calender Month, without fail.

9.With the above directions, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

23.08.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1.The Principal District and
Sessions Judge,
Pudukottai.

2.The Principal Sub Judge,
Pudukottai,

3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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