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Crl.RC.No.692 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.04.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.No.692 of 2024

N. Ponraj

...Petitioner

Vs.

1. Mercy Rose

2. Noble Raj (Minor)

3. Immanuel (Minor)

(R2 and R3 represented by their Mother R1)

...Respondents

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records and set aside the order dated 31.03.2023 passed by the II Additional Principal Judge, II Additional Family Court, Chennai in M.P.No.955 of 2022 in M.C.No.273 of 2022.

For Petitioner : Mr.R.Umashankar
for M/s. Sri and Shankar Associates

ORDER

This Criminal Revision case has been filed seeking to set aside the order dated 31.03.2023 passed by the II Additional Principal Judge, II Additional Family Court, Chennai in MP.No.955/2022 in MC.No.273/2022.



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2. The case of the petitioner is that, the marriage between the petitioner/husband and the 1st respondent/wife was solemnized in the year 2013 and out of the wedlock, they were blessed with the 2nd and 3rd respondents herein. While so, due to matrimonial dispute, the petitioner and the 1st respondent got separated in the year 2021. Thereafter, the respondents filed a maintenance case in MC.No.273 of 2022, claiming a monthly maintenance of Rs.20,000/- in favour of the 1st respondent and Rs.48,300/- in favour of the 2nd and 3rd respondents. The trial court, without proper adjudication and without hearing the petitioner allowed the said petition, vide exparte order dated 28.07.2022 and awarded a monthly maintenance of Rs.10,000/- each in favour of the respondents and further directed the petitioner to pay a sum of Rs.25,000/- towards litigation expenses. Aggrieved with the said order, the petitioner filed MP.No.955 of 2022, seeking to set aside the above said exparte order and the trial court, vide order dated 16.03.2023 held that the set aside petition will be allowed on condition that the petitioner pays a sum of Rs.1,000/- towards cost to be paid to the 1st respondent/wife on or before 30.03.2023, failing which the said petition shall stand dismissed and posted the matter on 31.03.2023.



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However, on 31.03.2023, the trial court had mechanically dismissed the set aside petition in MP.No.955 of 2022 for non appearance of the parties.

Challenging the said order, the petitioner has come up with this Revision.

3. Learned counsel for the petitioner submitted that, the petitioner was not able to appear before the court below and to show his bona fides, the petitioner is ready to pay a sum of Rs.5,000/- in favour of the 1st respondent and upon such payment being made by the petitioner, the ex parte order may be set aside and the court below may restore the main case in M.C.No.273 of 2022. He further submitted that, in the meantime, the petitioner is ready to pay a monthly interim maintenance of Rs.5,000/- each to the respondents till the disposal of the main case.

4. There is no dispute about the marriage between the petitioner and the 1st respondent. The 1st respondent is the wife and out of their wedlock, they were blessed with two children/the 2nd and 3rd respondents herein. It is to be pointed out that it is the duty of the husband to maintain his wife and child and the comforts, which were available to the spouse and child should



not be lost due to the friction between the warring parties. Only to that end,

Section 125 Cr.P.C. was brought into the statute. In such a backdrop, it becomes the duty of the husband to maintain his wife and child.

5. A perusal of the materials available on record reveal that, the respondents filed a maintenance case in MC.No.273 of 2022, claiming a monthly maintenance amount of Rs.20,000/- in favour of the 1st respondent and Rs.48,300/- in favour of the 2nd and 3rd respondents and the trial court vide exparte order dated 28.07.2022 ordered for a monthly maintenance of Rs.10,000/- each to the respondents, aggrieved by which, the petitioner filed a set aside petition in MP.No.955 of 2022, which came to be dismissed for non payment of cost of Rs.1,000/- ordered by the trial court in favour of the 1st respondent.

6. The petitioner has not appeared on the day when the matter was listed for being heard on which date, the present order has come to be passed. However, the petitioner, to show his bona fides, is ready and willing to pay a sum of Rs.5000/- as costs to the respondents and seeks restoration



of the main case so that he could agitate the same. This Court is of the view that in matrimonial disputes of this nature, the parties should be given some width so that the friction tries to settle down and harshness could be avoided. However, at the same time, it should not be lost sight of that the parties should not be allowed to drag the matter by repeated non-appearance.

7. Further, it is to be noted that no reason has been recorded on the basis of which a sum of Rs.10,000/- has been awarded as maintenance to each of the respondent. There is no material to show the earnings of the petitioner. In the said circumstances, this Court is inclined to modify the maintenance payable to each of the respondent at Rs.5,000/-.

8. In the case on hand, repeated non-appearance is not the reason for the ex parte order. In such view of the matter, this Court is inclined to set aside the order passed in MP.No.955 of 2022, on the petitioner paying a cost of Rs.5,000/- to the 1st respondent along with the arrears of maintenance within a period of four weeks from the date of receipt of a copy of this order



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and file proof of the same before the court below. Upon such proof being filed, the main M.C. No.273 of 2022 shall be restored back to file and taken up for hearing. Failure to pay the costs, as awarded above within the time stipulated, this petition would stand automatically dismissed without further reference to this Court.

9. Hence, in view of the above, this Court is inclined to modify the monthly maintenance awarded by the trial court in favour of the respondents in the following terms :-

(i) The petitioner is directed to pay a sum of Rs.5,000/- towards cost in favour of the 1st respondent within a period of two weeks from the date of receipt of a copy of this order and file proof of the same before the court below.

(ii) The monthly maintenance ordered by the court below is modified and the petitioner is directed to pay a monthly interim maintenance of Rs.5,000/- in favour of each of the respondents from the date of maintenance petition till final disposal of the main case.

(iii) the petitioner is directed to pay the arrears of maintenance amount, less than the amount if any already paid, to the respondents within a period of four weeks from the date of



receipt of a copy of this order. Upon such payment being made by the petitioner, the main case in MC.No.273 of 2022 shall be restored.

(iv) The petitioner shall continue to pay the above maintenance awarded in favour of the respondents on or before the 5th day of every English Calendar month.

(v) The trial court shall dispose of the main case in MC.No.273 of 2022 within a period of four months from the date of production of proof of payment of costs and arrears after affording opportunity to the parties.

10. With the above directions and modifications, this Criminal Revision Case stands disposed of.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

The II Additional Principal Judge, II Additional Family Court,
Chennai.

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M.DHANDAPANI, J.

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