



C.R.P.(PD)(MD)No.839 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.03.2024

CORAM

THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.839 of 2020

Sivakami

... Petitioner

Vs.

Manikandan

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India to call for the records and set aside the fair and decreetal order passed in E.P.No.105 of 2019 in I.A.No.9 of 2013 in H.M.O.P.No.10 of 2010, dated 08.07.2020 on the file of the Principal Sub-Court, Kumbakonam.

For Petitioner : Mr.M.R.S.Prabhu

For Respondent : Mr.C.Suresh Kannan

O R D E R

This Civil Revision Petition is directed against an order dated 08.07.2020 passed in E.P.No.105 of 2019 in I.A.No.9 of 2013 in



H.M.O.P.No.10 of 2010, on the file of the Court of Principal Subordinate Court, Kumbakonam. The said E.P.No.105 of 2019 was filed by the petitioner seeking execution of the order passed in I.A.No.9 of 2013 in H.M.O.P.No.10 of 2010 dated 21.01.2016. By the said order, the learned trial Court allowed the application filed for maintenance. The operative portion of the said order reads as under:

“In the result, the petition is partly allowed, directing the respondent to pay a sum of Rs.8,500/- p.m. to the petitioner on or before 7th day of every month as per the English Calendar deducting the maintenance amount of a sum of Rs.7,000/- ordered in M.C.No. 18/12 on the file of the Hon'ble Chief Judicial Magistrate Court, Kumbakonam with cost.”

2. The petitioner filed E.P.No.105 of 2019 seeking execution of the above said order dated 21.01.2016, contending that the above said order dated 21.01.2016 is to be treated as an order for payment of maintenance with effect from the date of filing of the said application in I.A.No.9 of 2013, though there is no such mention in the order passed by the learned trial Court. Thus, it is contended that the respondent herein is liable to pay maintenance with effect from the date of filing of the said application ie.,



with effect from 01.04.2013. But the respondent has complied with the order only from the date of the said order and hence, Execution Petition was filed for recovery of an amount of Rs.52,471/-. The said Execution Petition was dismissed by the learned trial Court, on coming to the conclusion that the order, which is sought to be executed, is not with retrospective effect and cannot be given effect from 01.04.2013, as contented by the petitioner.

3. It is settled law that the Executing Court cannot go beyond the decree sought to be executed. The operative portion of the order dated 21.01.2016, as extracted above, does not speak that the same was given retrospective effect or the relief is granted to the petitioner from the date of filing of the application for interim maintenance. In the absence of any such order or decree, the Executing Court cannot extend or expand with the scope of the decree and allow the petitioner to execute the same as contended by the petitioner. Hence, this Court does not find any error or illegality in the order passed by the learned trial Court.

4. No doubt, any application seeking maintenance is required to be granted from the date of filing of the application, but not from the date of



passing of the orders in the said application. But the fact remains that the order passed in I.A.No.9 of 2013 is only from the date of the order and if the petitioner is aggrieved by the said order, it is for the petitioner to seek appropriate amendment or by filing an appeal or revision against the said order. None of the above steps are resorted to by the petitioner. In the absence of any such steps, the reliance placed by the learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in the case of ***Rajnish Vs. Neha and another*** reported in ***AIR 2021 Supreme Court 569***, is of no avail. Though law is well settled on this particular aspect, when the question of execution of an order is to be considered the execution shall be in strict terms of the order or decree passed by the Court, but not applying the general law that is applicable to the facts.

5. Further, it is also brought to the notice of this Court that main HMOP itself was dismissed for default. The petitioner herein also filed M.C.No.18 of 2012, wherein initially maintenance of Rs.7,000/- was awarded and the same was subsequently enhanced to Rs.20,000/-, by order dated 04.11.2022. Hence, this Court is not inclined to interfere with the order under revision and it is left open to both the parties to pursue and



C.R.P.(PD)(MD)No.839 of 2020

work out their remedies either in M.C.No.18 of 2012 or otherwise in accordance with law.

6. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

26.03.2024

NCC : Yes/No

Index : Yes/No

vsm

To

1. I Additional District Court, Madurai.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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C.R.P.(PD)(MD)No.839 of 2020

MUMMINENI SUDHEER KUMAR, J.

vsm

C.R.P.(PD)(MD)No.839 of 2020



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C.R.P.(PD)(MD)No.839 of 2020

26.03.2024