

K.Gopalram Vs. A.Muthumari

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Court : Chennai

Decided On : Aug-22-2011

Judge : C.S.Karnan, J.

Appeal No. : C.R.P(PD)(MD)No.861 of 2011 and M.P(MD)No.1 of 2011

Appellant : K.Gopalram

Respondent : A.Muthumari

Advocate for Pet/Ap. : Mr.K.Samidurai, Adv.

Judgement :

1.The revision petitioner/husband has filed the above revision to set aside the order dated 22.03.2011 passed in I.A.No.96 of 2010 in H.M.O.P.No.131 of 2009 on the file of the Subordinate Court, Karur.

2.The brief facts of the case are as follows:-

The revision petitioner has filed H.M.O.P.No.129 of 2009 on the file of Subordinate Court, Karur against his wife for divorce on the ground of cruelty. The petitioner has stated in his petition that the marriage was solemnized between the respondent and himself on 28.06.2007 at G.V.Thirumana Mahal, Madurai, as per the Hindu Rites and Customs. The marriage was arranged by the family members of both sides and others. After the marriage, strained relationship developed between them. Hence, the divorce petition was filed by the revision petitioner.

3.The respondent/wife has filed HMOP.No.131 of 2009 on the file of the Subordinate Court of Karur for restitution of conjugal rights. While so, the respondent/wife has filed an interlocutory application in I.A.No.96 of 2010 in H.M.O.P.No.131 of 2009 on 01.06.2010 for interim maintenance against her husband for a sum of Rs.5000/- as monthly maintenance and Rs.25,000/- toward litigation fees. The said application was resisted by the revision petitioner/husband after filing a detailed counter statement. One of the contention in the statement was that the petitioner was earning a sum of Rs.6000/- per month as a sales executive in a water treatment plant. He further submitted that the respondent/wife has high academic qualifications and is working in a private school at Madurai and earning Rs.10,000/- per month. Her parents are also well off.

4.After hearing arguments of both sides, the learned Judge passed an order directing the revision petitioner to pay a sum of Rs.3000/- as monthly maintenance and Rs.15,000/- for the litigation fees. The order was passed on 22.03.2011. Aggrieved by the said order, the revision petitioner has filed the above revision petition to set aside the order passed in I.A.No.96 of 2010 in H.M.O.P.No.131 of 2009 dated 22.03.2011.

5.The learned counsel for the petitioner argued that the respondent possesses a triple master decree i.e., M.Com., M.Phil., and M.Sc and is working as a teacher at a private school in Madurai and earning Rs.10,000/- per month. Besides, she is getting Rs.5,000/- per month through home tuition. Her father is a painting contractor and earns about Rs.50,000/- per month in his avocation. As such, the respondent/wife is an earning lady and leading her life luxuriously. Therefore, she is not entitled to get any maintenance against the revision petitioner.

6.The learned counsel for the respondent/wife argued that it is an admitted fact that the respondent is a legally wedded wife of the revision petitioner. She is academically qualified but she is not employed in any school, as alleged. There is no authenticated proof that the respondent is an earning lady and getting sufficient income. The revision petitioner having married the respondent is liable to pay monthly maintenance. The learned trial Judge, after hearing the arguments and after perusal of the averments of both sides, passed the order.

7. In support of his arguments, the learned counsel for the respondent cited a judgment in the case of Deepak Jain v. Charu Jain reported in (2007)3 MLJ 819 (SC). The relevant portion of the said Judgment reads as follows:-

“4. We have also carefully perused the impugned order and annexures and heard the arguments advanced by the learned counsel for both sides. In our opinion, the order under challenge suffers from no infirmity. We, therefore, have no hesitation in dismissing the appeal filed by the appellant-husband. The appeal is accordingly dismissed.”

8. In another Judgment in the case of Thangam alias Marudhanayagam v. Marudhambal reported in (2000) M.L.J. (Supp.) 352. The relevant portion of this Judgment reads as follows:-

“6. In fact, merely because the petitioner took the stand that he had no source of income, it cannot be held that no relief can be granted by way of interim maintenance, in an application filed under Section 24. The petitioner having not disputed the relationship of the respondent as his wife, is legally as well as morally bound to maintain her during his lifetime.”

9. In another Judgment in the case of Kalaiselvi v. Palanisamy reported in 1998 MLJ 138. The relevant portion of this Judgment reads as follows:-

“6. In a recent decision of the Supreme Court reported in Jasbir Kaur Sehgal vs. District Judge, (1997)7 S.C.C. 7 in para 8, their Lordships have held thus: “..... No set formula can be laid for fixing the amount of maintenance. It has in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be

excessive or extortionate.....”

10. In another Judgment in the case of M.S.Mani vs. K.Shyamallai reported in (2007)1 MLJ 297. The relevant portion of this Judgment reads as follows:- “7. Based on the above said rulings, it emerges that the husband has to produce relevant documents and materials to prove his income, failing which, the allegations and averments made by the wife has to be taken into consideration for proof of income of the husband. It is also seen from the order of the Family Judge, Salem, that the petitioner has agreed to return the respondent's 10 sovereigns of jewels valued at Rs.50,000/- in four instalments and he had paid only Rs.5,000/-. The respondent is not having any source of income and she is living with the help of her parents. In spite of many adjournments, the petitioner has not complied with the order passed by the Family Judge, Salem, dated 11.07.2005 and hence in I.A.No.7 of 2005 the defence of the petitioner had been struck down and the petition was dismissed.”

11. In the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the learned Judge, this court is of the considered opinion that the maintenance amount of Rs.3,000/- granted by the trial Court without ascertaining the income of the petitioner is not justified. Further, the learned Judge awarded Rs.15,000/- as litigation expenditure, which is also on the higher side. As per counter statement filed by the revision petitioner it is evident that he is earning Rs.6000/- per month. Therefore, this court grants a sum of Rs.2000/- as monthly maintenance to the respondent/wife payable by the revision petitioner from date of interim maintenance application i.e., 02.06.2010 till date. Further, this court reduces the litigation expenditure payable to the respondent/wife from Rs.15,000/- to Rs.7,000/-. The said amount shall be paid by the revision petitioner within a period of one month from date of receipt of this order, as this is found to be fair and justifiable. This court further directs the learned Subordinate Judge, Karur to dispose of the H.M.O.P.Nos.129 and 139 of 2009 within a period of three months from the date of receipt of this order, without being influenced by the discussions of this court.

12.In the result, the above civil revision petition is disposed of with the above observations. Consequently, the order and decretal order passed in I.A.No.96 of 2010 in H.M.O.P.No.131 of 2009 dated 22.03.2011 on the file of Subordinate Court, Karur is modified. Connected miscellaneous petition is closed.

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