

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.07.2008

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Civil Miscellaneous Appeal No.1778 of 2006

Harisarvothaman @ Ramesh Appellant/Respondent

vs.

S.Prathiba Respondent/Petitioner

Appeal filed under section 19 of the Hindu Marriage Act against the order of the Family Court, Salem dated 24.04.2006 made in FCOP No.178 of 2004.

For appellant : Mr.G.R.Swaminathan

For respondent : Mr.P.Jagadeesan

JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

The appeal is against the order of the Family Court, Salem dated 24.04.2006 made in FCOP No.178 of 2004, by which the marriage between the parties was ordered to be dissolved, as prayed for by the wife, by striking down the defence of the husband on the ground that as the appellant-husband did not pay the interim maintenance in a sum of Rs.2000/- per month, inspite of repeated time granted and thus rendered himself not entitled to defend the case.

2. Learned counsel for the appellant assailed the order on the ground that at the time of passing the order impugned, a revision petition in CRP No.598 of 2006 was filed and pending before this Court questioning the quantum of compensation awarded by the Family Court. In such circumstances, the Family Court would not have passed the order impugned.

3. From the perusal of the records it is clear that at the time of passing the order impugned, no revision was pending and the revision filed against the order for payment of interim alimony was dismissed on 28.04.2006 which factum has been fairly admitted by the appellant herein. So, the appellant has no ground at all to assail the order passed by the Family Court non suiting the appellant

on the ground of non payment of interim alimony. Such a power is vested with the Family Court for passing such an order. However, having regard to the totality of the circumstances, particularly, having regard to the fact that the matter involves emotions, feelings and social stigma of the parties concerned, we are of the view that if one more opportunity can be given to the appellant to resolve the matter before the Family Court on merits, that would meet the ends of justice. However, such an order can be passed only on payment of the entire arrears as on date and also litigation expenses.

4. In view of the above, the following order is passed: On the appellant making the payment of entire arrears of maintenance as on 31.07.2008, including the litigation expenses, either directly to the respondent or making a deposit to the credit of the OP on the file of the Family Court, Salem, the order impugned in the appeal is set aside. In default of such payment, this appeal would stand dismissed automatically. On the appellant making the payment, as directed by this Court, the Family Court shall give preference to the FCOP, since the OP is of the year 2004.

5. With the above direction, the appeal stands disposed of. No costs. The connected miscellaneous petition is closed.

31.07.2008

BEING MENTIONED

This matter having been listed on Wednesday, the Twenty Fourth day of September, 2008 for being mentioned in pursuance of the order dated 31.07.2008 and made herein in the presence of the abovesaid counsel as either side, this Court made the following order :

(JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN, J.)

The above Civil Miscellaneous Appeal has been listed before this Court "for being Mentioned" on the basis of the letter filed by the counsel for the respondent.

2. It is submitted before this Court that Paragraph No.4 of the order of this Court reads as follows :

"In view of the above, the following order is passed: On the appellant making the payment of entire arrears of maintenance as on 31.07.2008, including the litigation expenses, either directly to the respondent or making a deposit to the credit of the OP on the file of the Family Court, Salem, the order impugned in the appeal is set aside. In default of such payment, this appeal would stand dismissed automatically. On the appellant making the payment, as directed by this Court, the Family Court shall give preference to the FCOP, since the OP is of the year 2004."

However, the time limit for payment has not been fixed in the said order. In the absence of time limit, the direction given in paragraph 4 of the order cannot be given effect to.

3. We have seen the order and what is stated above is correct. Hence, paragraph 4 of the order dated 31.07.2008 is deleted and the following paragraph is substituted.

"In view of the above, the following order is passed: On the appellant making the payment of entire arrears of maintenance as on 31.07.2008, including the litigation expenses, either directly to the respondent or making a deposit to the credit of the OP on the file of the Family Court, Salem, within a period of six weeks from today, the order impugned in the appeal is set aside. In default of such payment, this appeal would stand dismissed automatically. On the appellant making the payment, as directed by this Court, the Family Court shall give preference to the FCOP, since the OP is of the year 2004."

24.09.2008

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

mf
To

The Registrar, The Family Court, Salem.

+1 cc To Mr.G.R.Swaminathan, Advocate, SR.42133

+1 cc To Mr.P.Jagadeesan, Advocate, SR.41772

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RVL 24.10.2008