

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.06.2012

Coram

THE HON'BLE MR.JUSTICE C.S.KARNAN

Crl.R.C.No.1881 of 2004

Nagaraj

.. Petitioner/Respondent

Vs.

1.Amaramma

2.Murali Mohan (Minor)

3.Aswini (Minor)

.. Respondents/Petitioners

(Minors 2 and 3 are represented
by her mother Amaramma
Residing at Kothapalli Village,
Panchappanatti-Post,
Denkanikottai Taluk)

Prayer :- Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., against the order in Crl.M.P.No.1181 of 2004 in M.C.No.12 of 2003, on the file of the District Munsif cum Judicial Magistrate, Denkanikottai, dated 19.07.2004.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.V.Nicholas and
Mr.N.E.A.Dinesh

O R D E R

The petitioner / petitioner / respondent has preferred the present revision against the order passed in Crl.M.P.No.1181 of 2004 in M.C.No.12 of 2003, on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

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

The petitioners/wife and children of respondent has filed maintenance claim in M.C.No.12 of 2003, seeking maintenance from the respondent. Subsequently, an exparte order was passed in favour of the petitioners. Subsequent, the respondent/husband has filed a petition in Crl.M.P.No.1181 of 2004 in M.C.No.12 of 2003 under Section 5 of the Limitation Act to set-aside the exparte order. It was submitted in the petition in Crl.M.P.No.1181 of 2004 in M.C.No.12 of 2003 that the third respondent is living with the petitioner and that the petitioner was not able to appear for hearing on 13.01.2004 as his lawyer had not informed him the correct date of hearing. It was submitted that this petitioner had come to know about the exparte order only in the month of May 2004 and that subsequently, he had received copy of case records and filed the petition. It was submitted that if the petition is not allowed, he

would be put into hardship and hence, it was prayed to allow the petition.

3. The respondents in their counter had submitted that the minor daughter Aswini (the third respondent) is not living with the petitioner. The averments in the petition that the exparte order was passed only as the lawyer for the petitioner had not appeared was also not admitted. It was submitted that while the present case was going on in the Court, the petitioner was appearing regularly in the same Court in some other case filed under Section 444 of IPC and as such, the petitioner is well aware of the date of hearings in the maintenance case. It was submitted that as the petition had been filed after limitation time, it has to be dismissed.

4. The learned Magistrate, on scrutiny of case records observed that the petitioner had been appearing regularly in the same Court for some other case and as such, opined that the petitioner is aware of the exact date of hearings in the maintenance case. Hence, the learned Judicial Magistrate, on observing that the petitioner had wantonly abstained from attending the hearings in the maintenance case, dismissed the petition.

5. Aggrieved by the dismissal of his petition, the petitioner/ respondent has preferred the present revision.

6. The learned counsel for the revision petitioner has contended in his revision that the learned Judge failed to appreciate the bona-fide reasons given by the petitioner for his non-appearance that the learned Judge should have seen that the term sufficient cause should be construed liberally and the order to the contrary in taking a stringent view is illegal. It was contended that the Court below should have seen that the petitioner had deposited a sum of Rs.15,000/- in the trial Court without prejudice to the rights of the petitioner. It was contended that the finding of the Court below that the petitioner had a chance of knowing the date of hearing on 13.01.2004 as averred by the respondents herein is highly presumptuous. Hence, it was prayed to set-aside the order passed in CrI.M.P.No.1181 of 2004 in M.C.No.12 of 2003, on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

7. The learned counsel appearing for the respondents submits that the first respondent has filed the maintenance case in the year 2003 and has claimed maintenance for herself and the two minor children. The petitioner has wantonly and deliberately failed to appear before the trial Court at the time of hearing in order to prolong the case. He further submits that the respondents are entitled to receive maintenance from the petitioner.

8. On considering 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 trial Court, this Court is of the view that the main case has to be decided on merits after framing necessary issues for assessing the maintenance to the respondents herein. Therefore, the trial is absolutely necessary in the instant

case. In order to maintain the balance of convenience, this Court directs the revision petitioner to pay a sum of Rs.1,500/- per month as maintenance to the respondents from date of filing the maintenance case in M.C.No.12 of 2003, on the file of the District Munsif cum Judicial Magistrate, Denkanikottai, without prejudice. After the trial Court decides the said case on merits, the said amount paid by the petitioner will be taken into account while deciding the final order. This Court further directs the revision petitioner to pay the arrears of maintenance, as per this Court's findings within a period of two months from the date of receipt of this order, subject to earlier deposits made by the petitioner, as per this Court's interim order. After such deposit has been made, it is open to the respondents to withdraw the same, after filing a Memo. Further, the learned Magistrate is directed to dispose the main case after restoring the same on his file, on the top most priority basis.

9. With the above direction, the above revision is disposed of.

Sd/-
Assistant Registrar(J)
Dated: 20.08.2014

//True Copy//

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Denkanikottai.

RSK(CO)
JJM (21.08.2014)

Cr1.R.C.No.1881 of 2004

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