



C.R.P.(MD) No.127 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	15.11.2024
Pronounced on	04.12.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.127 of 2024

and

C.M.P.(MD) No.564 of 2024

K.Kumaresan

... Petitioner

Vs.

1.K.Aparna

2.Minor.Akshaya Kavi

3.Minor.Aaravi Kanali

Both minors are represented by their mother
and next friend, K.Aparna, the first respondent

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order passed in I.A.No.1 of 2021 in O.S.No.431 of 2021 dated 16.10.2023 on the file of the I Additional District Court (PCR), Tiruchirappalli.

For Petitioner : Mr.V.Illanchezian

For Respondents : Mr.B.Saravanan, Senior Counsel
for Mr.T.Pradeep



C.R.P.(MD) No.127 of 2024

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ORDER

The present Civil Revision Petition has been filed against the order dated 16.10.2023 passed in I.A.No.1 of 2021 in O.S.No.431 of 2021, on the file of the I Additional District Court (PCR), Tiruchirappalli.

2. The facts of the case are that the respondents are the plaintiffs and the revision petitioner is the defendant in the above suit in O.S.No. 431 of 2021; that the first respondent/first plaintiff is the wife of the revision petitioner/defendant and the second and third plaintiffs/second and third respondents are their children [hereinafter, the parties are referred to as plaintiffs and the defendant]; and the case of the plaintiffs in the suit is as follows:-

- i. i. The marriage was solemnized between the first plaintiff and the defendant on 10.11.2008 at Trichy, as per Hindu rites and customs.
- ii. At the time of the marriage, both the first plaintiff/wife and the defendant/husband were employed.
- iii. After the marriage, they resided in Chennai.
- iv. Out of their wedlock, two female children were born to them.



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C.R.P.(MD) No.127 of 2024

- v. The first plaintiff/wife was subjected to harassment by the defendant/husband and his family members.
- vi. The defendant/husband had illicit intimacy with another woman, and when the first plaintiff/wife questioned him about it, he pacified her, assuring that he would not engage in such behavior again.
- vii. Thereafter, the first plaintiff/wife and the defendant/husband went to USA for their employment.
- viii. However, the defendant's illicit relationship with the said woman continued. When the first plaintiff/wife confronted him again, the defendant/husband quarreled with her.
- ix. While they were in USA, the second child was born. By birth, the child was diagnosed with heart disease and was medically advised by doctors in USA to undergo surgery.
- x. Due to the quarrel between the first plaintiff/wife and the defendant/husband, the first plaintiff/wife was compelled to return to India with the children.
- xi. The surgery was performed in 2019, incurring medical expenses amounting to Rs.5,00,000/-. The defendant/husband failed to pay the said amount, and the entire sum was paid by the first plaintiff/wife, who borrowed the money from her sister, which was later repaid.



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C.R.P.(MD) No.127 of 2024

- xii. After the child's surgery, the defendant/husband returned to USA for work, while the plaintiffs remained in Chennai.
- xiii. When the defendant/husband returned to India during the Covid-19 period, his behavior worsened, and he developed illicit relationships with other women. The defendant/husband failed to take care of the plaintiffs.
- xiv. As a result, the relationship between the first plaintiff/wife and the defendant/husband became strained.
- xv. The plaintiffs began living separately in Trichy from May 2021.
- xvi. The defendant/husband failed to meet the expenses for the education and medical needs of the children.
- xvii. Since the relationship between the first plaintiff/wife and the defendant/husband had irretrievably broken down, the first plaintiff/wife was compelled to file a divorce petition before the Sub Court, Kulithalai in H.M.O.P. No. 66 of 2021. She also filed a petition under the Protection of Women from Domestic Violence Act, 2005, in D.V.C. No. 7 of 2021 before the Judicial Magistrate Court No. II, Kulithalai.
- xviii. Apprehending action in the above proceedings, the defendant/husband started to send a sum of Rs. 30,000/- per month to the plaintiffs from July 2021.
- xix. In order to harass the first plaintiff/wife, the



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C.R.P.(MD) No.127 of 2024

defendant/husband filed a petition in H.M.O.P. No. 79 of 2021 before the Sub Court, Kulithalai, seeking restitution of conjugal rights.

xx. During the pendency of the above proceedings, the plaintiffs filed the present suit, praying for a judgment and decree in their favor and against the defendant, granting them a monthly maintenance of Rs. 25,000/- each (total Rs. 75,000/- per month), to be paid by the defendant to the plaintiffs. They also sought the creation of a charge over the suit properties to secure payment in case of non-payment or default in honoring the decree.

3. During the pendency of the said suit, the plaintiffs filed I.A.No.1 of 2021, praying for an order directing the defendant/husband to pay a sum of Rs. 9,20,000/- to the plaintiffs towards the following expenses and interim maintenance:

For open heart surgery of the second child	- Rs.5,00,000/-
For maintenance at the rate of Rs.75,000/- for the months May and June	- Rs.1,50,000/-
For maintenance at the rate of Rs.45,000/- from July till the date of filing of I.A.	- Rs.2,70,000/-

Total	- Rs.9,20,000/-



C.R.P.(MD) No.127 of 2024

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In the result, the petition is allowed. Rs. 14,21,555/- which has to be paid by the Respondent to 1st petitioner within a month from the date of this order. From August 2023 onwards Rs.30,000/- plus school fees of both the children to be paid. The amount if any paid during August and September 2023 can be noted by both the parties. If not, to be paid within 10th of next preceding month (English calendar) regularly, until the final disposal of the suit.

5. Aggrieved by the same, the present Civil Revision Petition has been filed.

6. Mr.V.Illanchezian, the learned counsel for the revision petitioner/defendant, would submit that the marriage between the first plaintiff/wife and the defendant/husband took place on 10.11.2008, and through their wedlock, two female children were born to them; that after the marriage, the first plaintiff/wife voluntarily went away from the matrimonial home with the children and has been living in Trichy District



C.R.P.(MD) No.127 of 2024

since May 2021; that the first plaintiff/wife holds a Post Graduate degree in Engineering and was employed until 2013, after which she resigned from her job of her own volition; that the first plaintiff/wife then worked in USA from February 2018 to February 2019 and thereafter left her job; that a property at Perumbakkam, Chennai, was purchased in the name of the first plaintiff/wife, for which the loan amount was repaid by both the defendant/husband and the first plaintiff; that additionally, a property was purchased in the names of both the defendant/husband and the first plaintiff/wife, for which, although the loan was obtained by the first plaintiff/wife, it was repaid by the defendant/husband; that the rent for both properties amounts to Rs.25,000/- per month, which is credited to the account of the first plaintiff/wife; that furthermore, some other properties were purchased in the name of the first plaintiff/wife or jointly in their names, for which the loan was repaid by the defendant/husband; and that the defendant/husband also made a fixed deposit in the name of the first plaintiff/wife and the second plaintiff/first daughter in Canara Bank, Panikampatti Branch, Karur District, worth about Rs.6 lakhs and credited over Rs.50 lakhs in the account of the first plaintiff/wife during the period when the defendant/husband was in USA.



C.R.P.(MD) No.127 of 2024

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7. The learned counsel for the revision petitioner/defendant would further submit that the defendant/husband transferred a sum of Rs. 4,50,000/- in the name of the first plaintiff/wife for the heart surgery of their daughter on 04.12.2018 and a sum of Rs.1,50,000/- on 11.01.2019; that the defendant/husband transferred a sum of Rs.18,67,000/- (Rs. 13,81,000/- + Rs.4,86,000/-) from the month of July 2019 to April 2021 and from the month of July 2021 to December 2023; that the said value-added properties and the payments made to the first plaintiff/wife were safely in her hands; that apart from that, the defendant/husband made utmost efforts on several occasions to bring back the plaintiffs to the matrimonial home, but the same ended in vain; that the first plaintiff/wife, under the misguided advice of her family members, filed the above suit in O.S.No.431 of 2021 for maintenance and I.A.No.1 of 2021 for interim maintenance, suppressing the above transactions, in respect of which the defendant/husband has filed a detailed counter-affidavit; and that, however, the trial court failed to consider the same and passed the impugned order, which calls for interference by this court.



C.R.P.(MD) No.127 of 2024

8. On the other hand, Mr.B.Saravanan, the learned Senior Counsel for the respondents/plaintiffs, would submit that the conduct of the defendant/husband was not good; that the first plaintiff/wife was compelled to leave the matrimonial home; that the first plaintiff/wife is incapable of maintaining either herself or the children, and therefore, they were constrained to file the above suit for maintenance; that the contention of the defendant/husband that he had transferred more than Rs. 6,00,000/- for the medical expenses of the second child is incorrect, as the dates pertaining to the payment of the said amount were before the second child was born; that furthermore, the defendant/husband was earning more than Rs. 8,00,000/- per month, as per Indian currency, and the trial court directed the defendant/husband to pay interim maintenance of Rs.30,000/- plus school fees for both the children from August 2023 onwards, along with a sum of Rs. 14,21,555/- towards arrears of maintenance and medical and education expenses of the children; that it is an admitted fact that, although the first plaintiff/wife sold the property, the amount was used by her only for purchasing the house at Trichy for the purpose of residing with the children; that the defendant/husband is seeking to pay only a sum of Rs.30,000/- for all the plaintiffs, which is not sufficient for them to maintain themselves; that the above application was filed for a direction to



C.R.P.(MD) No.127 of 2024

the defendant/husband to pay a sum of Rs.9,20,000/-, which includes the medical expenses of the children and arrears of maintenance, and for interim maintenance; and that the trial court, considering the above facts, has rightly passed the impugned order, which calls for no interference.

9. Heard on both sides. Records perused.

10. The undisputed facts are as follows:

- i. The marriage between the defendant/husband and the first plaintiff/wife was solemnized on 10.11.2008.
- ii. The second and third plaintiffs are the children born to them out of their wedlock.
- iii. After the marriage, the first plaintiff/wife and the defendant/husband resided in Chennai and later went to USA for avocation.
- iv. Due to matrimonial discord, the first plaintiff/wife and the defendant/husband have been living separately.
- v. The first plaintiff/wife has resigned from her job.
- vi. The third plaintiff/second child underwent surgery.
- vii. The first plaintiff/wife filed H.M.O.P.No.66 of 2021 before the Sub Court, Kulithalai, seeking divorce, and also filed D.V.C.No.7 of 2021 before the Judicial



C.R.P.(MD) No.127 of 2024

Magistrate No. II, Kulithalai under the Protection of Women from Domestic Violence Act, 2005.

- viii. The defendant/husband filed H.M.O.P.No.79 of 2021 before the Sub Court, Kulithalai, seeking restitution of conjugal rights.
- ix. The plaintiffs filed O.S.No.431 of 2021 under Order VII, Rule 1 of the Civil Procedure Code and Sections 18(1), 18(2)(a)(b)(e), and 20 of the Hindu Adoption and Maintenance Act, 1956, seeking maintenance.
- x. They also filed I.A. No. 1 of 2021 for interim maintenance, along with medical expenses and expenses for the education of the children.

11. In the backdrop of the aforementioned facts, the question that arises for consideration in the present Civil Revision Petition is whether the impugned order passed by the trial court warrants any interference.

12. As per Section 18(1) of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'the Act' for the sake of brevity), a Hindu wife is entitled to claim maintenance from her husband during her lifetime. Section 18(2) of the Act grants her the right to live separately, without forfeiting her claim to maintenance, if the husband is guilty of any of the misbehaviours enumerated therein, or if he is in any of the



C.R.P.(MD) No.127 of 2024

objectionable conditions specified therein. Therefore, a Hindu wife, while sustaining her marriage and preserving her marital status, is entitled to claim maintenance from her husband. Section 18 of the Act reads as follows:

18. Maintenance of wife.—

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance—

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish or willfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) [****]

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;



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C.R.P.(MD) No.127 of 2024

(g) if there is any other cause justifying living separately.

(3) A Hindu wife shall not be entitled to separate residency and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

13. Section 20 of the Act provides for the maintenance of children and aged parents. It casts a statutory obligation on a Hindu male to maintain an unmarried daughter who is unable to maintain herself from her own earnings or other property. Section 20(3) of the Act reflects the principles of Hindu law, particularly the obligation of a father to maintain his unmarried daughter. This right is absolute under personal law, and has been given statutory recognition by this Act.

14. Section 23 of the Act provides that, while awarding maintenance, the Court shall have due regard to the criteria specified therein. Section 23 of the Act reads as follows:

23. Amount of maintenance. –

(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and



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C.R.P.(MD) No.127 of 2024

in doing so, the court shall have due regard to the consideration set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect, of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;
- (g) the number of dependants entitled to maintenance under this Act.



C.R.P.(MD) No.127 of 2024

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15. Therefore, the defendant/husband cannot escape his liability and responsibility to maintain the plaintiffs. Moreover, it is not in dispute that the first plaintiff/wife is not earning and is residing separately with the children. Consequently, a reasonable and sufficient amount is required for the maintenance of the plaintiffs, including their education and medical expenses, which have be paid by the defendant/husband. At the time of filing the I.A. for interim maintenance, the defendant/husband was working as a software engineer in USA and was earning a sum of Rs. 8,00,000/- per month, or slightly more. This fact has not been disputed by the defendant/husband, the revision petitioner herein. However, the learned counsel for the revision petitioner, the defendant/husband, would submit that the revision petitioner has left his job in USA and is now unemployed. This Court is of the view that the revision petitioner, the defendant/husband, can secure an employment to maintain himself and the plaintiffs, respondents herein, as he is a technically skilled person.

16. For the reasons stated above, the amount ordered by the trial court is not found to be exorbitant. Therefore, the impugned order dated 16.10.2023 in I.A.No.1 of 2021 in O.S.No.431 of 2021 is liable to be



C.R.P.(MD) No.127 of 2024

confirmed and is accordingly confirmed. This Civil Revision Petition is

liable to be dismissed.

17. The revision petitioner, the defendant/husband, is directed to pay the amount ordered by the trial court to the respondents, plaintiffs, within a period of three months from the date of receipt of a copy of this order.

18. In the result, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

04.12.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

The I Additional District Judge (PCR),
Tiruchirappalli,
Tiruchirappalli District.



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C.R.P.(MD) No.127 of 2024

K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made
in
C.R.P.(MD) No.127 of 2024
and
C.M.P.(MD) No.564 of 2024

04.12.2024