

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.305 of 2015

S.Anuradha

.. Petitioner

Vs.

R.Venkatesh

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.04.2012 in I.A.No.100 of 2011 in H.M.O.P.No.150 of 2008 on the file of the Sub-Court, Tambaram and to enhance the maintenance amount awarded by the said Court from Rs.12,500/- to Rs.17,000/- payable from 21.03.2011, being the date of filing of the petition in the said I.A.

For petitioner : Mr.K.Elango

For respondent : Respondent - served with notice - No appearance

ORDER

The revision is filed against the order directing the respondent-husband to pay a sum of Rs.12,500/- per month as interim maintenance to the petitioner-wife till the disposal of the main petition and to pay the same

on or before 5th of every month. The Court below has ordered the maintenance to be paid only from the date of order, instead of from the date of petition. This is under challenge in this Civil Revision Petition, apart from seeking enhancement of maintenance amount.

2. It is settled law that maintenance amount should be awarded only from the date of petition and not from the date of the order. On this aspect, it is worthwhile to notice the following decisions, relevant portion of which is extracted hereunder:

MANU/SC/1046/2014 = AIR 2015 SC 300 = 2015 (2) SCC 385:
(Jaiminiben Hirenbbhai Vyas Vs. Hirenbbhai Ramesbbhchandra Vyas):

"8. In *Shail Kumari Devi Vs. Krishan Bhagwan Pathak* MANU/SC/3353/2008 : 2008 (9) SCC 632 ; para's 39-41, this Court dealt with the question as to from which date a Magistrate may order payment of maintenance to wife, children or parents. In *Shail Kumar Devi*, this Court considered a catena of decisions by the various High Courts, before arriving at the conclusion that it was incorrect to hold that, as a *normal rule*, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application. The Court held, and we agree, that if the Magistrate intends to pass such an order, he is required to record reasons in support of such order. Thus, such maintenance can be awarded from the date of the order, or, if so ordered, from the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary.

9. In the case before us, the High Court has not given any reason for not granting maintenance from the date of the application. We are of the view that the circumstances eminently justified grant of maintenance with effect from the date of the

application in view of the finding that the Appellant had worked before marriage and had not done so during her marriage. There was no evidence of her income during the period the parties lived as man and wife. We, therefore reverse the order of the High Court in this regard and direct that the Respondent shall pay the amount of maintenance found payable from the date of the application for maintenance. As far as maintenance granted under Section 24 of the H.M. Act by the Courts below is concerned, it shall remain unaltered."

MANU/TN/2344/2005 = 2005 (3) MLJ 256 (Madras High Court):
(Dipak Mehra Vs. Bindiya Hillary Mehra):

12.Therefore, taking into consideration, the circumstances of the case, the claim made by the respondent/wife for payment of maintenance amount from the date of filing of the application under Section 24 of the Hindu Marriage Act is in order and justifiable as also held by the Hon'ble Supreme Court in *Smt.Jasbir Kaur Sehgal Vs. District Judge, Dehradun and others*, MANU/SC/0835/1997 = AIR 1997 SC 3397. As such, the argument advanced for the revision petitioner that the respondent is entitled to claim maintenance from the date of the order in I.A.No.1405 of 2001 is without any force."

3. In the case on hand, the reasonings given by the trial Court for awarding maintenance from the date of the order, are perverse and hence, the Civil Revision Petition has to be allowed on the above said narrow compass.

4. Accordingly, the respondent-husband shall pay the interim maintenance amount as awarded by the Court below, from the date of

petition till the disposal of main H.M.O.P. The arrears of maintenance as on today, shall be paid on or before 01.03.2017 and the respondent-husband shall continue to pay such maintenance as ordered by the Court below by 5th of every English calendar month.

5. The Civil Revision Petition is allowed to the extent indicated above. No costs.

02.02.2017

Index: Yes/no

Internet: Yes/no

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Copy to

The Subordinate Judge,
Tambaram.

PUSHPA SATHYANARAYANA, J

CS

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