

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4672 of 2011

R.Mathrubutham ... Petitioner

Vs.

B.Pankajalakshmi .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.02.2011 made in I.A.No.1163 of 2010 in O.P.No.1429 of 2009 on the file of the I Additional Family Court, Chennai.

For Petitioner : Mr.D.J.Venkatesan
For Respondent : No appearance

ORDER

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The Civil Revision Petition is filed against the fair and decretal order dated 13.02.2011 made in I.A.No.1163 of 2010 in O.P.No.1429 of 2009 on the file of the I Additional Family Court,

Chennai.

2. The petitioner is the husband and respondent is the wife. The petitioner filed O.P.No.1429 of 2009 for restitution of conjugal rights on the file of the Family Court, Chennai. The respondent filed counter statement on 20.01.2001 and is contesting the O.P. The respondent filed I.A.No.1163 of 2010 under Section 24 of the Hindu Marriage Act, claiming a sum of Rs.60,000/- for dental surgery.

3. According to the respondent, the petitioner slapped her so violently and due to that, her teeth started shaking and she suffered bleeding. The petitioner did not take her to the doctor for treatment. Now she consulted the doctor and doctor suggested dental surgery, which would cost Rs.60,000/-. She is earning a meagre income, she has to maintain herself and she has to give a portion of her income to her parents to discharge the loan incurred by them for conducting the marriage between the petitioner and respondent. Therefore, she filed the present application for claiming a sum of Rs.60,000/- to meet out the medical expenses.

4. The petitioner filed counter affidavit denying all the

averments made by the respondent in the said application and submitted that the respondent is not entitled to claim the amount under section 24 of the Hindu Marriage Act. The petitioner further submitted that as per the said Section, the respondent cannot claim medical expenses, she can claim only interim maintenance. The respondent filed the said application after three years of the alleged incident only to harass the petitioner.

5. Before the learned Judge, the parties have let in oral and documentary evidence. The learned Judge awarded a sum of Rs.20,000/- towards medical expenses on the ground that the petitioner has not proved that the respondent has sufficient means to meet out the medical expenses and the issue whether the petitioner is responsible for the alleged dental surgery can be decided at the time of conclusion of trial in the main O.P.

6. Against the said order dated 13.02.2011 made in I.A.No.1163 of 2010, the present civil revision petition is filed by the petitioner/husband.

7. Heard the learned counsel for the petitioner and perused

the materials on record. There is no representation on behalf of the respondent.

8. The learned counsel for the petitioner reiterated the averments made in the counter affidavit filed in I.A.No.1163 of 2010 and contended that the learned Judge has failed to consider the objection of the petitioner that no amount can be granted under Section 24 of the Hindu Marriage Act for medical expenses and the the respondent is earning member. The learned Judge also failed to consider the fact that the respondent has come out with the present application three years after the alleged incident, which necessitated the dental surgery without filing any documents.

9. As per Section 24 of the Hindu Marriage Act, when a wife is not having independent income sufficient for her, the Court has power to direct the husband to pay the monthly maintenance during the proceedings. The said section empowers the Court to order payment of maintenance to the party during pendency of the proceedings whether he or she is not having sufficient means to maintain him or her. It is including medical expenses. The petitioner has stated that the respondent is an earning member. But he has not produced any materials to disprove the averments

of the respondent that she is earning only meagre amount, which made her unable to meet out the medical expenses. It is not the case of the petitioner that the respondent has sufficient means to meet out the medical expenses. Just because the petitioner and respondent are living separately, the petitioner cannot refuse to pay the medical expenses to the respondent. In the circumstances, there is no reason to interfere with the order of the learned Judge dated 13.02.2011.

10. In the result, this Civil Revision Petition is dismissed. No costs.

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Index : Yes/No

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To

I Additional Family Court, Chennai.

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V.M.VELUMANI, J.

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