

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

CORAM

THE HONOURABLE MR.JUSTICE Dr.P.DEVADASS

Civil Revision Petition(PD) No.3406 of 2013
and
M.P.No.1 of 2013

1.A.Savitha Ujwala
2.Baby Niharaikaa Venkatagiri ... Petitioners

vs

M.R.Venkatagiri ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to dispose of I.A.No142 of 2013 in H.M.O.P.No.4157 of 2012 on the file of the learned I Additional Judge, Family Court at Chennai within the time frame fixed by this Hon'ble Court.

For Petitioners : Ms.R.T.Shyamala

For Respondent : No appearance

ORDER

As only a short and straight question is involved and only a very minimal

relief is sought for, we shall dispose of this revision petition today at the admission stage itself.

2.The revision petitioner married the respondent on 19.02.2010 in Dindugul, according to the Hindu rites and customs. They were blessed with a daughter. Perhaps, one more woman born to suffer in this world. The couples were lead happy married life. But it did not long last. There was eventual separation. She came to her parents' house along with the child. It is because of the matrimonial discordance arise between them.

3.The husband filed H.M.O.P.No.3 of 2012 in the Subordinate Court, Dindugul, seeking divorce on the ground of cruelty. She entered appearance. Later, based on the orders of this Court, the said HMOP has been transferred to Family Court, Chennai. It was renumbered as H.M.O.P.No.4157 of 2012. It is being not enquired into by the I Additional Judge, Family Court, Chennai.

4.In the said HMOP, she filed I.A.No.142 of 2013 seeking pendente lite maintenance for herself and for her daughter and also litigation expenses under Section 24 of the Hindu Marriage Act, 1955. In the meanwhile the revision petitioner/wife lost her father. He left the world unable to see the

sufferings of his daughter and grand daughter.

5.The docket entries made in I.A.No.142 of 2013 shows that simple maintenance petition came to be adjourned from time to time for filing counter by the husband.

6.At this juncture, the wife moved this Court by way of filing this CRP.No.3406 of 2013 under Article 227 of the Constitution of India for issuing relevant direction to the Family Court, Chennai to dispose of her interim petition expeditiously.

7. An husband's obligation to maintain his wife arises on his marriage with a woman. Such obligation towards his children arises on their birth. These obligations are imposed on him "by operation of law". It is also a "moral obligation" imposed upon him. It is 'immoral' and 'illegal' to deny them maintenance. In my view, it is a "sacred duty of an husband or father", as the case may be, towards his wife and children. This is the least the father of a girl expects from his son-in-law. Otherwise why should he marry a woman and leave her and her children in lurch in the street. If he is not in a petition to maintain her and the children he should have remarried a bachelor.

8. Besides the love and affection of their father, the children can also seek financial support from their putative father for their genuine and reasonable needs. It is "too cruel on his part to deny them maintenance". There may be many disputes or differences between the parents but that cannot be a reason to refuse them maintenance and make them to suffer. "In matrimonial disputes the innocent children are the worst sufferers". The warring couples fail to understand their sufferings. The relief of divorce has been granted by Court to a couples, though they become ex-husband and ex-wife, they continue to be the parents of their children.

9. In the matrimonial proceedings instituted under the said personal laws, the wife and children can seek maintenance against the husband/father, as the case may be. It is to provide them financial support. It is for their survival, as long as the matrimonial proceedings are pending. Thus, they came to be called 'pendent lite maintenance'. It is also a 'temporary alimony' to the wife. They are in the nature of granting 'interim relief, 'interim measure', 'interim protection'.

10. The component of such maintenance includes a 'reasonable and

a fair' amount for the woman to maintain herself 'according to the mode of life to which she is accustomed to', 'according to the status to which she is entitled to', 'according to the mode or life style to which her husband is accustomed to'. But, in any case, it cannot be for a luxurious mode of living or for 'extravagansa' and not beyond the means of the husband. In the case of children, this component also includes their educational expenses. They can be granted litigation expenses and monetary relief to cover their to and fro expenses to attend the Court and return their homes.

11.Hindu wives can seek such pendent lite maintenance in a pending matrimonial proceedings under Section 24 of the Hindu Marriages Act. The children can seek such maintenance from their father under Section 26 of the Act. Section 37 of the Indian Divorce Act, 1869, Section 39 of the Parsi Marriage and Divorce Act, 1936, Sections 36 and 38 of the Special Marriage Act, 1954 also deals with grant of pendent lite maintenance. Though the position in Islamic Law is different, Islamic Law do have provision for the women and children.

12.The object of Section 24 of the Hindu Marriages Act in providing maintenance to a party in matrimonial proceedings is obviously to

provide financial assistance to the spouse to maintain herself or himself during the pendency of the proceedings and also to have sufficient funds to carry on the litigation so that the spouse does not unduly suffer in the conduct of the case for want of funds.

13. Section 24 of the Hindu Marriage Act seeks to provide financial support, wherewithal to the wife and Section 26 of the Act seeks to provide maintenance to the children to withstand the financial crisis arising out of the separation and also to face the matrimonial proceedings initiated by her husband.

14. The object behind Sections 24, 26 of the Hindu Marriage Act is survival of the wife and children as long as the matrimonial proceedings are pending. It also enures to the appeals, revisions and connected proceedings arising out of the matrimonial proceedings, either from the pendente lite maintenance proceedings or from the main matrimonial proceedings.

15. One disturbing feature which requires our attention is delay in the disposal of the maintenance petitions under Sections 24 and 26 of the Hindu Marriage Act.

16. In this case, the wife and children of the respondent have filed this maintenance petition in I.A.No.142 of 2013 under Sections 24, 26 of the Hindu Marriage Act as early as on 12.12.2012. Even today, it is pending.

17. This is a classic example of 'Law's delay', 'Court's delay', 'Judge's delay', 'System law', 'System failure'. All the stakeholders in the administration of gender justice shall owe responsibility for this sorry state of affair.

18. In a matrimonial proceedings, the women and children are fighting the husband, father, as the case may be not on equal footing. Some women gets financial support from their parents, brothers and sisters and also some work and earn. These are all exceptional cases. Many women and children are unable to face the onslaught of matrimonial proceedings because of their financial crisis. The husbands exploit their this pitiable plight. This is an area where 'women empowerment' is completely lacking.

19. In view of the mad rush in matrimonial Courts, it is very easy to go into these Courts, but very difficult to come out of these Courts within a

short span of time. It is time consuming.

20.The women and children financially suffer very much. During the pendency of the matrimonial proceedings without proper financial support their survival becomes very difficult. They also suffer emotionally, mentally, physically, economically and also fiscally (financially).

21.The women and children are in a disadvantageous position, whereas it is not so in the case of husbands. Capitalising their this financial constraints, the husbands torture them by dragging on even these simple maintenance petitions for years together.

22.Adding fuel to their worries, the Courts also contribute their part by their long delay in disposing of these simple maintenance petitions. Actually by their inaction the Courts abets the perpetration of matrimonial violence and exploitation of women and children by the husbands. The present case before us itself is a classic example for this allegation.

23.Presently this woeful situation prevails in almost all the Family Courts and in other Courts dealing with matrimonial proceedings. The situation

is not far better in the Magistrate's Courts dealing with maintenance petitions under Section 125 Cr.P.C.

24.If statistics of the pendency of these maintenance petitions are called for from these Courts and studied, we have to hung our heads, we will be ashamed to see the face of the affected women and children.

25.The women and children are standing in queues in these Courts to get relief even in these simple maintenance petitions for years together. It is quite a sickening sight. They did not get their due share of justice in the administration of gender justice by these Courts. Practically, the women and children are neglected by these Courts. Only lip service is being rendered to them.

26.Actually, these pendent lite maintenance petitions have to be disposed of in a summary manner. In these petitions, the work involved is very very minimal. In these petitions, a prima facie view as to the existence of relationship between the parties, financial capacity of the husband and the financial need of the wife and the children are required to be considered. Mostly income documents will be referred to. This can be done by reading the

affidavits of the spouses.

27. On the first hearing or in the next hearing or at least in the further hearing these simple maintenance petitions can be easily disposed of, fixing a reasonable quantum of maintenance. It is not a difficult and herculean task. The learned Judges need not write lengthy orders running to several pages. It is just a miscellaneous petition for interim measure. A short and swift order will do.

28. Keeping this in mind, the Law Makers have fixed a prescribed period within which these maintenance petitions have to be disposed of (See Sections 24, 26 of Hindu Marriage Act, 1955, Section 36 of Special Marriage Act, 1954, Section 37 of Indian Divorce Act, 1869, Section 39 of Parsi Marriage and Divorce Act, 1936, also see 3rd proviso to Section 125 Cr.P.C and Central Act No.50 of 2001). Generally, these petitions should be disposed of within 60 days from the date of service of notice on the wife. Subsequently, in some Statutes, this period also has been reduced.

29. Yet, what is happening in the Family Courts, in the other matrimonial Courts and in the Magistrate's Courts is very alarming. The learned Judges try these simple maintenance petitions like a murder case in a Sessions

Court or a most complicated suit before a Civil Court. Consequently, this also contributes to the Law's delay.

30. After a cruel exercise, the wife and children get maintenance orders, generally, a paltry sum, unrealistic and unmatching to the high inflation and spiralling prices of even essential commodities. Sometimes, the Courts dismiss them on a misunderstanding of law.

31. After so much legal battle, some merciful learned Judges pass maintenance orders. This will signal one part of the end of a journey. Therefore, the woman has to fight another battle to collect the maintenance amount so ordered by filing collection petition or the Execution Petition. The husband will be ready to spend any amount on matrimonial litigation but he will not have the heart to pay a paltry sum towards maintenance to his wife and children.

32. The situation is not happy in the revisions and appeals filed before the Sessions Courts and also before this Court. The women and children will have to wait for several years and till the orders are passed they suffer in silence. This is not the aim of law. This is not a correct justice delivery system.

33.Unlike in other litigations delay in the disposal of maintenance petitions affects the women and children very much. It affects a cross section of the society. It is human (woman) suffering. There are cases in which woman and children could not get financial support to survive themselves and face the matrimonial proceedings initiated by the husbands. Ultimately, they give up the legal battle, leave the Court with wounded feelings. And ex parte orders are freely passed. The erring husbands happily leave the Court. There is a victor and a vanquished. The result is failure of justice in gender justice. These are stark realities staring at our face.

34.There is no point in crying over the spilt milk. Past is past. Let us think of the future. Some remedial measures have to be attempted. Judges dealing with these simple matters must realise their responsibilities and their social obligation towards these type of litigants. They must keep in mind their pitiable plight. Unreasonable delay in the disposal of these simple maintenance petitions exhibits inefficiency on the part of the learned Judges.

35.Even in these petitions mediation, reconciliation can be attempted. Courts can effect compromise even on the quantum of maintenance in these maintenance petitions and pass orders accordingly [See Order 32-A,

Section 89 CPC, Section 23(2) Hindu Marriage Act, Section 9 Family Courts Act, 1984 and **Afcons Infrastructure Ltd and Another vs. Cherian Varkey Construction Co. (P) Ltd [(2010) 8 SCC 24]**.

36. Our aim should be to secure succor to the affected women and children quickly. In these matters delayed justice is denial of or burial of justice. Here hurried justice is the need of the hour. Our learned Judges are to be sensitized. They must be made aware of this darker side of gender justice. The same situation prevails in the Criminal Courts, in the Court of Judicial Magistrates, Metropolitan Magistrates, Mahila Courts, Family Courts, Sub-Courts and District Courts.

37. In these matters, the Tamil Nadu State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Authorities, High Court Legal Services Committee can play a significant role.

38. Very recently on 13.04.2017, in C.R.P.(PD)No.1366 of 2017, I have also issued several directions for the speedy disposal of these simple maintenance petitions.

39. In view of the foregoing, it is ordered as under:

(1) The learned I Additional Principle Judge, Family Court, Chennai is directed to dispose of I.A.No.142 of 2013 in HMOP No.4157 of 2012, within a period of 15 days from the date of receipt of a copy of this order.

(2)As soon as the said I.A. is disposed of, the trial court should submit its completion report to the Registrar(Judicial) of this Court.

(3)Consequently, the connected miscellaneous petition is closed.

(4)In such circumstances, no order as to costs.

25.04.2017

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Index:yes/no

Internet:yes

To

1.The Principal Judge,
City Civil Court,
Chennai.

2.The Principal Judge,
Family Court,
Chennai.

3.The I Additional Judge,
Family Court,
Chennai.

4.The II Additional Judge,
Family Court,
Chennai.

Copy to:

- 1.The Registrar(Judicial).
- 2.The Assistant Registrar, (A.S),
High Court, Madras.
- 3.The Director,
Tamil Nadu State Judicial Academy,
Greenways Road,
R.A.Puram, Chennai-28.

Office to Note:

Issue order copy today(26.04.2017)

B/o.
dn
26.04.2017

Dr.P.DEVADASS.J,

dn

CRP(PD) No.3406 of 2013

25.04.2017