

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.04.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(PD)No.1484 of 2018
and
C.M.P.No.7896 of 2018**

K.Nagaraj

.. Petitioner

Vs.

Savitha

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 10.10.2017 passed in I.A.No.94 of 2013 in H.M.O.P.No.309 of 2011 passed by the learned Principal Subordinate Judge, Tirupur.

For Petitioners :M/s.A.V.Raja

ORDER

This Civil Revision Petition has been filed by the revision petitioner against the order made in H.M.O.P.No.309 of 2011 on the file of the learned Principal Subordinate Judge, Tiruppur.

2. During the pendency of the H.M.O.P.No.285 of 2014, the respondent has filed the application in I.A.No.94 of 2013 in H.M.O.P.No.309 of 2011.

3. The learned counsel appearing for the petitioner would submit that the order passed by the learned Principal Subordinate Judge, Tirupur, in I.A.No.94 of 2013 is against the law, weight of evidence and probabilities of the case. The trial Court fail to note the fact that the above suit was filed by the petitioner herein in the year of 2011 seeking a Dissolution of marriage on the ground of cruelty and desertion and along with the said main HMOP, the petitioner filed the application in I.A.No.95 of 2013 seeking for DNA test of his child and disputing the paternity of the child. The trial Court failed to note that the petitioner was examined in chief and cross and posted for further evidence. At that the stage the respondent filed the above Interlocutory Application seeking interim maintenance of Rs.3,000/- is unwarranted and liable to be set aside.

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4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. It is admitted there is only one child, of course it is disputed by the respondent. The order was passed only in an application filed under Section 24 of Hindu Marriage Act.

6. It is to be noted that the petitioner has filed petition for dissolution of marriage against the respondent. During the pendency of the petition for divorce, the respondent filed application under Section 24 of the Hindu Marriage Act for interim maintenance. Though she had claimed Rs.8,000/- per month, the Trial Court granted only Rs.3,000/-. The petitioner has challenged the said order on the ground that he has challenged paternity of the child and the respondent has sufficient means to maintain herself. Admittedly, there is a child, of course the paternity of the child is disputed by the petitioner. Since application for taking blood sample for DNA test is pending, the said fact of paternity of child yet to be decided. The order was passed only in an application filed under Section 24 of the Hindu Marriage Act. The petitioner himself admitted the fact that he is working in private firm and getting Rs.7,000/- per month. The Trial Court passed order by directing the petitioner to pay only a sum of Rs.3,000/- per month towards the interim maintenance of the respondent and child until further order. Considering the income of the petitioner and the child is in the custody

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of the respondent, the order passed by the Court below is very reasonable. However, the respondent has not challenged the order and filed either any appeal or revision and there is no specific reason to interfere with the order passed by the court below.

7. Therefore, this Court is not inclined to allow the revision. This court finds that no illegality or infirmity with the fair and decreetal order passed by the Court below and there is no merit in the revision. Hence, this civil revision petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

25.04.2018

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To
The Principal Subordinate Judge,
Tirupur.

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