

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD).Nos.890 & 3625 of 2017andC.M.P.No.4366 of 2017

1. Suchith K.Nair ... Petitioner in CRP No.890 of 2017
 2. Uma Priyadarshini ... Petitioner in CRP No.3625 of 2017

Vs.

1. Uma Priyadarshini ... Respondent in CRP No.890 of 2017
 2. Suchith K.Nair ... Respondent in CRP No.3625 of 2017

Prayer in both Civil Revision petitions: Civil Revision Petitions are filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal order dated 23.11.2016 made in I.A.No.93 of 2015 in H.M.O.P.No.368 of 2014 on the file of the Sub court at Ponamallee.

For Petitioner in CRP No.890 of 2017 &
 For Respondent in CRP.No.3625 of 2017 :Mrs.K.Sumathi

For Respondent in CRP.No.890 of 2017 &
 For Petitioner in CRP No.3625 of 2017 :Mr.Thomas T.Jacob

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The relief sought for in these revisions are to set aside the Fair and Decretal order dated 23.11.2016 made in I.A.No.93 of 2015 in H.M.O.P.No.368 of 2014 on the file of the Sub court, Ponamallee.

2. The petitioner in CRP.No.890 of 2017 is the husband and the respondent is the wife, who filed another revision petition in CRP.No.3625 of 2017.

3. The respondent/wife filed a divorce petition under Section 13 (1)(ia) seeking for permanent Alimony under Section 25 of the Hindu Marriage Act in H.M.O.P.No.368 of 2014 before the Sub-Court, Poonamallee.

4. The respondent/wife in CRP.No.890 of 2017 filed an application under Section 24 of the Hindu Marriage Act in I.A.No.93 of 2015 in H.M.O.P.No.368 of 2014 before the trial Court, to direct the respondent/husband in H.M.O.P.No.368 of 2014 to pay a sum of Rs.50,000/- per month each towards, maintenance to her and her son.

5. After hearing the arguments on both sides, the learned trial Judge allowed the application in I.A.No.93 of 2015, by directing the husband to pay a sum of Rs.25,000/- per month towards interim maintenance to the petitioner from the date of petition and also directed to bare the educational expenses of their son.

6. Aggrieved against the said order passed by the trial Court dated 23.11.2015, the husband has preferred CRP No.890 of 2017 and wife has preferred CRP.No.3625 of 2017 before this Court.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondents in both Civil Revision petitions, perused the available records and the order passed by the trial court.

8. According to the learned counsel appearing for the husband, the maintenance amount fixed by the trial Court is more excessive. According to the learned counsel appearing for the wife, the amount awarded by the trial Court is on lower side.

9. The income of the both wife and husband has to be necessarily taken into consideration while fixing the maintenance. Therefore, the husband is working as a Sr.Captain (Pilot) in Go Airlines (India) Ltd., and earning a sum of Rs.6,33,750/- p.m., (Rupees Six lakhs thirty three thousand seven hundred and fifty only) and the wife is working as a Assistant Professor (OG) in Saveetha School of Engineering and earning a sum of Rs.26,557/- p.m.,(Rupees twenty six thousand five hundred and fifty seven only).

10. The counsel for the respondent/wife in CRP No.890 of 2017 placed his reliance on the decision of the Hon'ble Supreme Court reported in *Civil Appeal No.4615 of 2017 in the case of Manish Jain Vs Akanksha Jai* wherein it is observed as follows:

"Section 24 of the Hindu marriage Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent."

11. According to the learned counsel for the petitioner/wife in CRP No.3625 of 2017, the trial Court failed to consider the cost of living at the prevailing situation and it is difficult to lead the family within the said amount and also she cannot take care of the child with the meagre amount. The counsel for the husband states that his wife is employed and earning a lumpsum amount, hence the award passed by the trial Court is on higher side.

12. The learned counsel for the petitioner/husband in CRP.No.890 of 2017 submits that the decision relied on by the learned counsel for the respondent/wife does not squarely applicable to the present case on hand and the facts mentioned therein are slightly different from the present case on hand. Further, while dealing with under Section 24 of the Hindu Marriage Act,

the income of the spouse cannot be mandatorily calculated to the income of other spouse. Hence the authorities relied on by the learned counsel for the petitioner/husband, is also not applicable to the fact of the present case on hand.

13. Since both are employed and earning sufficiently, therefore, they can easily meet out the litigation expenses and maintain themselves. However, the child is living with wife. Now the child is moving from class 3 to 4. Since the petitioner/husband in CRP.No.890 of 2017 is the father of the child, and he is in better position than the mother of the child; legally and morally he is responsible to bare the educational expenses of the child and the learned counsel for the husband fairly agreed that the petitioner/husband is ready and willing to bare the educational expenses of the child from 23.04.2015 onwards.

14. After hearing both sides, the trial Court comes to a conclusion that both are employed and fixed the maintenance amount at Rs.25,000/- p.m. In para 15 of the above referred to the decision of the Hon'ble Supreme Court (Supra) it is observed as,

"An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the

wife or husband who makes a claim for the same has no independent income sufficient for her or his support to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court. "

15. In this case, admittedly, the wife is employed and getting salary of Rs.26,557/- as per the above cited decision (Supra), the wife has independent source of income to maintain herself. Hence, the wife is not entitled to get interim maintenance under Section 24 of Hindu Marriage Act. However, the child is entitled to get interim maintenance for a sum of Rs.15,000/- p.m (Rupees fifteen thousand only) and actual education expenses.

16. Therefore, for the above said reasons, the revision filed by the husband in CRP.No. 890 of 2017 is partly allowed and the revision filed by the wife in CRP No. 3625 of 2017 is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

17. However, since the main case is pending from 2014, the trial Court is directed to dispose of the main case preferably within a period of six months from the date of receipt of a copy of this order. Further, no application for extension of time will be entertained.

19.04.2018

Note: Issue order copy on 23.04.2018

Index: Yes/No

Speaking order / Non speaking order
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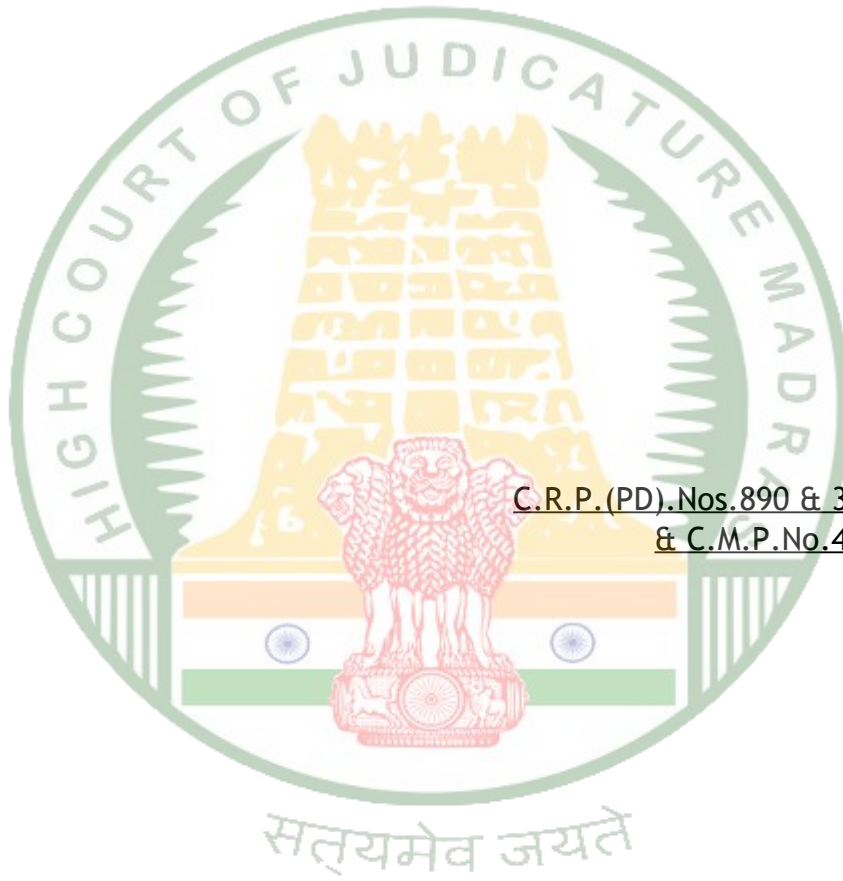
To

The Sub court, Ponamallee

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P.VELMURUGAN, J.,

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