



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD) No.1693 of 2015
and M.P.(MD) No.1 of 2015

Janagarajan

... Petitioner/Respondent/Petitioner

-vs-

Gowri Nandhini

... Respondent/Petitioner/Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the Fair and Decreetal order passed by the Court of the Subordinate Judge, Virudhunagar in I.A.No.46 of 2014 in H.M.O.P.No.47 of 2014 on 26.06.2015 and allow this Civil Revision Petition.

For Petitioner : Mr.G.Marimuthu
For Respondent : Mr.V.Sasikumar

O R D E R

The petitioner and the respondent are husband and wife and their marriage had taken place way back in the year 2001. Pursuant to the difference of opinion between them, the revision petitioner / husband had filed a petition in H.M.O.P.No.47 of 2014 before the learned Subordinate Judge, Virudhunagar, seeking divorce . During the pendency of the said petition, the respondent / wife has filed an application in I.A.No.46 of 2014, seeking interim maintenance. The learned Subordinate Judge, Virudhunagar,, upon consideration of both sides, directed the petitioner / husband to pay interim maintenance of Rs.10,000/- per month to the respondent / wife till the disposal of H.M.O.P.No.47 of 2014. Aggrieved over the said order, the petitioner / husband is before this Court, seeking to set aside the order of maintenance.

2. Heard the learned counsel on either side and this Court also perused the material documents available on record.

3. Learned counsel for the petitioner has submitted that the respondent / wife has filed the petition for interim maintenance solely with an intention to harass and humiliate the petitioner/husband. Though, on earlier occasion pursuant to the efforts taken by the husband, again, the respondent / wife refused to live with the petitioner and filed petitions / complaints one



after the other, to establish that the petitioner/husband was the root cause for such separation. It is submitted that due to economic crisis, the petitioner lost his employment and at present, he is unemployed and therefore, award of such huge amount as interim maintenance is unsustainable.

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4. On the contrary, learned counsel for the respondent / wife has contended that it is the duty cast upon the petitioner / husband to maintain his wife and child and to provide her basic needs. Learned counsel for the respondent/wife has further contended that it is incorrect to state that the petitioner is jobless, as he is a Civil Engineer and earning a huge sum of money. Therefore, the order passed by the Trial Court is justifiable and it does not call for any interference by this Court.

5. On perusal of the averments raised in the petition, it is seen that the petitioner has stated that he was driven out of the job due to recession and has been struggling to eek out his livelihood. This contention ex-facie cannot be accepted, because even if the husband is not earning and if he has the physical capacity to earn, it is his duty to maintain. It is a settled law that the husband cannot escape from his liability to pay maintenance, which includes interim maintenance also to the wife and children by merely citing the reason of financial constraint. It is appropriate to quote the decision of the Hon'ble Supreme Court reported in Shamima Farooqui vs. Shahid Khan, (2015) 5 SCC 705, where-under, it has been held as under:

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In Chaturbhuji v. Sita Bai[14], it has been ruled that:-

"Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Veena Kaushal[15] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.

"15.....In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home.



..... The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one.

..... She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

6. Though it is submitted on the side of the respondent / wife that the petitioner / husband is well off, minting money through his employment, no document has been produced by the wife in support thereof. There is no second opinion that it is obligatory on the part of the petitioner to provide a good comfort to his wife, considering the fact that it is at the same time incumbent upon the petitioner to take care of his parents also, the fixation of interim maintenance of Rs.10,000/- is now modified to Rs.8,000/- per month.

7. In the result,

- a) this Civil Revision Petition is partly allowed;
- b) the fixation of interim maintenance of Rs.10,000/- per month by the learned Subordinate Judge, Virudhunagar in I.A.No.46 of 2014, is modified to Rs.8,000/- per month;
- c) the revision petitioner / husband is directed to pay a sum of Rs.8,000/- as monthly Interim Maintenance to the respondent/ wife from the date of filing the petition and continue to pay the same on or before 5th of every succeeding English Calendar month by way of demand draft or deposit in the respondent's Bank Account;
- d) the petitioner is directed to pay the arrears of interim maintenance from the date of filing the petition till date by way of demand draft to the respondent, within a period of six weeks from the date of receipt of a copy of this order.



e) The learned Subordinate Judge, Virudhunagar is directed to dispose of H.M.O.P.No.47 of 2014 within a period of three months from the date of receipt of a copy of this order without giving adjournment to either parties and the parties shall cooperate for disposal of the petition within the time prescribed by this Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-II)

To:

The Subordinate Judge,
Virudhunagar.

COPY TO:

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.M.Law Office, Advocate SR.No. 73684
+1cc to M/S.V.Sasikumar, Advocate SR.No. 73811

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