



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

PRONOUNCED DATED: 05.07.2018
RESERVED ON : 11.04.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1786 of 2016
and
CMP (MD) Nos.8602 & 8603 of 2016

S.Robinson .. Petitioner/Petitioner/Petitioner

vs

V.Sindhia .. Respondent/ Respondent/ Respondent

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 27.06.2016 passed in I.A.No.175 of 2015 in D.O.P.No.453 of 2014 on the file of the District Judge, Kanyakumari District at Nagercoil.

For Petitioner : Mr.G.Aravinthan

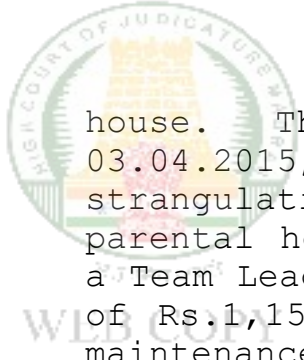
For Respondent : M/s.V.Viswatha

ORDER

This revision is directed against the order dated 27.06.2016 passed in I.A.No.175 of 2015 in D.O.P.No.453 of 2014 on the file of the learned District Judge, Kanyakumari District @ Nagercoil directing the petitioner herein to pay a sum of Rs.8,000/- per month as interim alimony to the respondent from the date of filing of the petition till the date of order and also to pay a sum of Rs.10,000/- as litigation expenses, failing which the main petition will stand dismissed.

2. The petitioner and the respondent are husband and wife. The husband filed the main O.P. under Section 10(1)(x) of the Indian Divorce Act, 1869 seeking for dissolution of the marriage solemnized on 22.10.2001 at C.S.I. Church, Azhagiyamandapam.

3. Pending main O.P., the wife filed I.A.No.175 of 2015 under Section 36 of the Indian Divorce Act, seeking interim maintenance of Rs.15,000/- per month and Rs.10,000/- towards expenses of the proceedings alleging that both the petitioner and the respondent lived as husband and wife till 03.04.2015 at various places and at last they resided at Bangalore in their own



house. Thereafter, there were some quarrels between them. On 03.04.2015, when her husband attempted to kill her by strangulation, the wife escaped and now she is living with her parental home. According to the wife, her husband was working as a Team Leader at Saplabs Company, Bangalore and was drawing salary of Rs.1,15,000/- per month and he has means to pay the interim maintenance as prayed for by her.

4. Resisting the petition, the husband filed counter stating that in fact, his wife often quarrelled with him. It is stated that he had purchased a flat by availing loan of Rs.35,70,000/- from LIC HFL with the help of his parents and also borrowed money from his relatives/friends. His wife did not get any money from her parents. It is stated that he was not a Team Leader as alleged by his wife and he was just a software developer. Though, he was earning Rs.71,469/-, he has other liabilities of Rs.68,124/- to be borne by him. Apart from the above liabilities, he has to spend more than Rs.20,000/- towards books and uniforms for the children every year. It is also stated that his wife was well educated and trained to work in school and she had worked as teacher in Prajval Vidyaniketan School. Since the respondent was a qualified and capable of earning livelihood, she was not entitled to get maintenance as claimed by her.

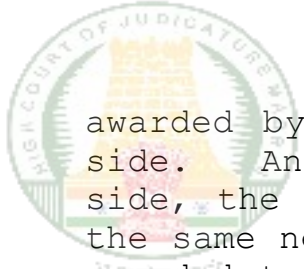
5. Upon consideration of the rival submissions, the learned District Judge, allowed the petition directing the husband to pay a sum of Rs.8,000/- per month as interim alimony to the wife and also to pay a sum of Rs.10,000/- towards litigation expenses. Aggrieved by the same, the husband preferred this Civil Revision Petition.

6. I heard Mr.G.Aravinthan, learned counsel appearing for the husband/petitioner and M/s.V.Viswatha, learned counsel appearing for the wife/respondent and also perused the materials available on record.

7. The learned counsel for the petitioner submitted that the learned District Judge has mechanically passed the order without taking into account amounts available with the petitioner and such a mechanical consideration of the subject matter in issue has totally prejudiced the petitioner. He submitted that the respondent not only deserted the petitioner, but also the two minor daughters left with the petitioner, which clearly speaks volumes of act of cruelty committed by the respondent. He submitted that out of the monthly earnings, the petitioner has to take care of her two minor daughters and learned District Judge has arbitrarily fixed the interim maintenance of Rs.8,000/- per month and also Rs.10,000/- towards litigation expenses.

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8. Per contra, the learned counsel appearing for the respondent/wife submitted that the quantum of interim maintenance



awarded by the learned District Judge, in fact, is on the lower side. Anyhow considering the submissions put forth on either side, the learned District Judge awarded Rs.8,000/- per month and the same need not be interfered with. She argued that Rs.10,000/- awarded towards litigation expenses is reasonable. In support of her submissions, the learned counsel cited the following decisions:

- (1) *Hirachand Srinivas Managaonkar v. Sunanda*, reported in CDJ 2001 SC 188.
- (2) *Sujit Kumar v. Vandana* (MAT.APP (F.C) 35 of 015, dated 8.8.2016 (Delhi High Court)
- (3) *Manish Jain v. Akanksha Jain* (Civil Appeal No.4615 of 2017, dated 30.3.2017.

9. The short question that falling for consideration is whether learned District Judge was right in directing the petitioner herein to pay a sum of Rs.8,000/- per month as interim maintenance and also litigation expenses of Rs.10,000/- to the respondent.

10. This Court is not inclined to go into the merits of the rival contentions advanced by the parties in the main O.P. The only question falling for consideration is whether the respondent/wife is entitled to maintenance pending main O.P. and whether the amount of Rs.8,000/- awarded by the learned District Judge is on the higher side.

11. In *Manish Jain v. Akanksha Jain*, supra, the Hon'ble Supreme Court held as under:

"15. 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 or 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. Like wise, 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."

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12. The learned counsel for the petitioner submitted that the respondent was well educated and trained to work in schools.



In fact she was working as a teacher in Prajval Vidyaniketan School and she is a qualified and capable of earning livelihood and hence, she is not entitled to maintenance as claimed. The submission of the learned counsel for the petitioner cannot be countenanced.

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13. Section 24 of the Hindu Marriage Act empowers the Court in any proceeding under the Act, if it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the petitioner and the respondent.

14. In *Shailja and another v. Khobbanna* (Criminal Appeal Nos.125-126 of 2017, dated 18.1.2017), the Hon'ble Supreme Court observed as under:

"whether the wife is capable of earning or whether she is actually earning are two different requirements and merely because she is capable of earning is not a sufficient reason to reduce the maintenance awarded by the Family Court."

15. In the case on hand, it is not the case of the petitioner that the respondent/wife is still working as teacher and was earning considerable amount as salary. Merely because wife is a qualified teacher, it would not be sufficient to hold that she is in a position to maintain herself and that in any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

16. As far as the amount of interim maintenance as sought for and awarded by the learned District Judge is concerned, the paying capacity of the petitioner/husband is required to be looked into.

17. According to the respondent/wife, the petitioner was earning Rs.1,15,000/- per month by working as Team Leader in Saplabs Company at Bangalore.

18. According to the petitioner, he was working as a software developer and was earning Rs.71,469/-. Though he was drawing a sum of Rs.71,469/-, he has to bear a sum of Rs.68,124/- per month as his liabilities, apart from Rs.20,000/- towards books and uniforms for the children every year. Admittedly, nothing has been proved by the petitioner/husband to show that he is incurring liabilities of Rs.68,124/- per month.



19. As per his version, the petitioner was drawing a salary of Rs.71,469/- by working as software developer. The said statement of the petitioner was made in the year 2015. Obviously, his present salary must be more than the above figure. Therefore, keeping in view his paying capacity, the learned District Judge has directed the petitioner/husband to pay a sum of Rs.8,000/- per month as interim alimony, which according to me, is a reasonable amount and no interference is warranted.

20. Coming to the litigation expenses awarded by the learned District Judge is concerned, Section 24 of the Hindu Marriage Act stipulates the other party to pay to the petitioner the expenses of the proceedings. In the case on hand, the learned District Judge awarded Rs.10,000/- towards litigation expenses to be paid by the petitioner, which according to me is reasonable and there is no need to interfere with the same.

21. It appears that by an order dated 08.09.2016 in C.M.P. (MD)Nos.8602 and 8603 of 2016, this Court while granting interim order of stay of operation of all further proceedings in D.O.P.No.453 of 2014 and I.A.No.175 of 2015, directed the petitioner to pay a sum of Rs.5,000/- per month instead of Rs.8,000/- per month to the respondent as interim alimony on or before 5th day of every succeeding English calendar month commencing from October 2016 and also to pay a sum of Rs.10,000/- as litigation expenses. The petitioner has not appealed against the said order and the said order was still in operation.

22. In the result, the Civil Revision Petition is dismissed. The petitioner shall continue to pay a sum of Rs.8,000/- per month as interim alimony on or before 5th of every English calendar month till the disposal of the main O.P. If the petitioner/husband has paid or deposited any amount of maintenance pursuant to the interim order of this Court dated 08.09.2016, the same shall be set-off against the arrears to be paid by the petitioner/husband. The respondent/wife is at liberty to withdraw the amount, if any, deposited by the petitioner/husband pursuant to the order dated 08.09.2016. It is made clear that this Court has not expressed any opinion on the merits of the matter. Since the main O.P. is of the year 2016, we request the learned District Judge to expedite the trial of the main O.P. as early as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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To

The District Judge,
Kanyakumari District @ Nagercoil.

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+1cc to Mr.G.Aravinthan, Advocate SR.No.71449

+1cc to Mr.T.Cibi Chakraborty, Advocate Sr.No.71482

VSV

VB/SKN/RSK/SAR3/18.07.2018/6P/4C

order made in
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and
CMP (MD) Nos.8602 & 8603 of 2016
05.07.2018