

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

C.R.P.(PD)No.1700 of 2019

and

C.M.P.No.10929 of 2019

Marie Antoine Moselle

... Petitioner

Vs.

1.Rosyane

2.Senthil

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 22.06.2018 made in I.A.No.842 of 2017 in M.O.P.No.326 of 2015 on the file of the Family Court, Pondicherry and allow the above petition.

For Petitioner : Mr.R.S.Raveendhren

For R1 : Mr.R.Thiagarajan

ORDER

This Civil Revision Petition has been directed against the fair and decreetal order passed in I.A.No.842 of 2017 in M.O.P.No.326

of 2015 on the file of the Family Court, Pondicherry by order dated 22.06.2018. Before the Court below, the revision petitioner/ husband filed the main petition that is M.O.P.No.326 of 2015 seeking for divorce against the first respondent namely Rosyane who is the legally wedded wife of the revision petitioner. In the said petition, which is pending before the Court below, the first respondent/wife filed the present interlocutory application in I.A.No.842 of 2017, seeking for interim maintenance / interim alimony from the revision petitioner/husband. After hearing both sides and considering the merits and demerits as well as the claim and counter claim of the parties, the learned Judge, by an order dated 22.06.2018 has allowed the said I.A., by ordering a sum of Rs.5,000/-(Rupees Five Thousand only), payable by the revision petitioner / husband to the first respondent wife as monthly interim maintenance, that apart, a sum of rupees One Thousand payable towards the litigation expenses. Aggrieved over the said order, the present Civil Revision Petition has been filed.

2.I have heard Mr.R.S.Raveendhren, learned counsel for the petitioner, who would submit that, first of all, the said I.A., is not maintainable before the Court below as the said I.A., since had

been entertained by invoking the power under Article 270 of the French Civil Code, where there has been no scope of interim alimony / interim maintenance and therefore, the said I.A., should not have been entertained by the Court below.

3.In this context, the learned counsel for the petitioner would further submit that, eventhough, the said point was not originally raised at the time of taking the said I.A., for decision, subsequently the said point was raised and based on the said jurisdictional point or the power of the Court, the revision petitioner / husband filed a review petition against the order made in I.A.No.842 of 2017. However, the said review petition has not at all been entertained and not even been numbered and the same had been rejected by returning the same stating that a revision or appeal can be preferred before the appropriate appellate forum.

4.The learned counsel, therefore would further submit that, in view of the said provision under Article 270 of the French Civil Code, which does not provide anything for interim alimony or interim maintenance, the said I.A., itself could not have been entertained.

5.That apart, the learned counsel appearing for the revision petitioner would submit that, the said original petition was filed by the revision petitioner mainly on the ground of adultery. As, accordingly to the petitioner, the first respondent/wife has been in adultery with the second respondent, therefore, the respondent/wife does not entitle for any interim alimony from the petitioner. That apart, the learned counsel would make further argument to state that, the revision petitioner being an ordinary mechanic working in an Air Conditioner Repair Company, out of which he was able to earn only Rs.7,000/- to 8,000/- per month and also get a meagre rent from a portion of the property let-out, he was able to get a sum of Rs.2,000/-. Therefore, altogether, the maximum salary or earning of the revision petitioner is only Rs.10,000/- per month. However, the first respondent/wife is residing in a part of the building separately and therefore she is not entitled for any interim maintenance or interim alimony from the revision petitioner.

6.Relying upon these grounds, the learned counsel for the petitioner would submit that, the present order passed by the Court

below to pay a sum of Rs.5,000/- as monthly interim maintenance is unjustifiable, unlawful and erroneous. Therefore, interference of this Court in the said impugned order, by way of this Civil Revision Petition, is very much necessary.

7.It is the further submission of the learned counsel for the petitioner that, already a sum of Rs.3,000 being paid by the petitioner to the first respondent/wife, therefore, that amount of Rs.3,000/- itself is enough to maintain the first respondent/wife. Therefore, the question of paying any further sum, as has been directed in the impugned order, does not arise.

8.Mr.R.Thiagarajan, learned counsel appearing for the first respondent, who succeeded before the Trial Court in I.A.No.842 of 2018, would submit that, the grounds raised by the revision petitioner before the Court below in the Original petition itself for the ground of divorce as adultery with the second respondent, is a false statement and it has been denied. Therefore on that ground, the revision petitioner cannot deny the interim alimony or interim maintenance to the respondent/wife. He would further submit that, though it was claimed by the petitioner that a sum of Rs.3,000/- is

paid every month to the first respondent/wife, the learned counsel strongly denies the statement and further submits that, he does not have any instruction from the first respondent that she is receiving a sum of Rs.3,000/- as interim maintenance already being paid on voluntary basis by the revision petitioner/husband.

9.The learned counsel for the first respondent would further submits that, originally Article 240 of the French Civil Code was the enabling provision to seek for such an interim alimony, since the Article 240 has already been deleted, the present application was filed under Article 270 of the French Civil Code which speaks about the alimony to be payable to the wife in any divorce. Therefore under Article 270 of the French Civil Code, the wife can very well maintain an application for seeking interim maintenance. By making this statement, the learned counsel for the first respondent would submit that, the impugned order passed by the Court below directing the revision petitioner to pay a sum of Rs.5,000/- as interim maintenance is a justifiable order. Therefore, it does not call for any interference.

10.I have considered the submissions of both sides.

11.The first and foremost contention raised by the revision petitioner is that, the Court below should not have entertained the application itself under Article 270 of the French Civil Code, which does not speak about the interim alimony. The said issue raised by the revision petitioner has to be answered first. In this regard, Article 270 of the French Civil Code is extracted hereunder:

"Article 270-

Divorce puts an end to the duty of support between spouses.

One of the spouses may be compelled to pay the other a benefit intended to compensate, as far as possible, for the disparity that the breakdown of the marriage creates in the respective ways of living. This benefit shall be in the nature of a lump sum. It shall take the form of a capital the amount of which must be fixed by the judge.

However, the judge may refuse to grant such a benefit where equity so demands, either taking into account the criteria set out in Article 271, or where the blame lies wholly upon the spouse who requests the advantage of this benefit, considering the particular circumstances of the breakdown."

12.On a cursory reading of the aforesaid Article 270 of the

French Civil Code it discloses that, either of the spouses can compel the other to pay a benefit intended to compensate for the disparity in the breakdown of the marriage creates. The said benefit of compensation shall be in the nature of a lump sum. It shall take a form of a capital, the amount of which shall be fixed by the Judge. Therefore, it become clear that, a one time lump sum compensation can be ordered by the Court, at the time of deciding the petition to breakdown the marriage relationship between the spouses. Therefore, if strictly considered Article 270 of the French Civil Code, it does not provide any scope for interim maintenance. Therefore, in this context, the plea raised by the revision petitioner/husband can be accepted.

13.However, the Divorce Act, 1869, being the Central Act will have an application through out the country except the State of Jammu and Kashmir, as per Section 2 of the said Act, which provides that, the Act extends to the whole of India except the State of Jammu and Kashmir. Therefore, the said Act can be made applicable to the Union Territory of Pondicherry also. If either of the spouses filed a suit for dissolution of marriage or for divorce on the ground set out at Section 10 of the said Act, where the wife

wants to present a petition for expenses of the proceedings and alimony pending of the suit, that can be decided and whatever amount can be directed to be set apart as alimony pending the suit, as it may deem fit and just to the Court concerned, it can be decided and ordered.

14.This has been specifically provided in Chapter 4 under the heading *Alimony pendente lite* in Section 36 of the Divorce Act, 1869, which reads as follows:

"The Divorce Act 1869

Section 36: Alimony pendente lite.- In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for expenses of the proceedings and alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of the expenses of the proceedings and alimony pending the suit as it may deem just:

Provided that the petition for the expenses of the proceedings and alimony pending the suit, shall,

as far as possible, be disposed of within sixty days of service of such petition on the husband.

15. Here in the case in hand, suit for divorce, that is the M.O.P.No.3261 of 2015., has been filed by the husband, where the wife has come forward with the interlocutory application to seek for an interim maintenance that is the interim alimony, pending of the suit/ original petition. When such an application is filed by the wife, the same shall be decided by the Court concern, for the payment to the wife for the expenses of the proceedings and alimony, pending the suit as it may deem fit and just.

16. Accordingly, since, the first respondent wife has now come forward to present an Interlocutory Application, to seek for interim alimony and also for litigation expenses, both the claim made by the wife can very well be fit in under the enabling provision namely Section 36 of the Divorce Act, 1869 where the Courts are duty bound to decide the applications on merits. Accordingly the present decision taken by the Court below through the impugned order, in interlocutory application, by order dated 22.06.2018, can be construed that, the order passed is not under Article 270 of the

French Civil Code but only under Section 36 of the Divorce Act, 1869.

17. When that being the position, though the plea of the revision petitioner that Article 270 of the Code does not provide for such interim alimony, is acceptable, that *ipso facto*, will not entitle the revision petitioner to deny such interim alimony / interim maintenance for want of provision, in view of the expressed provision available under Section 36 of the Divorce Act, 1869. Therefore, this Court finds that, there is absolutely no infirmity in the said impugned order insofar as the power and jurisdiction of the Court is concerned.

18. On the side of the merits of the issue is concerned, whether Rs.5,000/- as interim maintenance/interim alimony directed by the Court below is a justifiable one or not, is concerned, it is an admitted case of the revision petitioner that, his salary as well as his income from his premises let out for rent altogether comes to Rs.10,000/- per month. Out of which, even though it was claimed by the petitioner that, already a sum of Rs.3,000/- is being paid as interim alimony on voluntary basis, the said statement since has been denied by the wife side through the learned counsel, this

Court does not want to go into those controversies as to whether the revision petitioner has already paid Rs.3,000/- as interim alimony, which is the matter to be decided later.

19.Insofar as the current interim maintenance is concerned, whether the first respondent/wife is entitled to get it, if so, the claim of Rs.5,000/- is justifiable, is the only issue to be decided. As has been stated above, since the husband is earning a sum of Rs.10,000/- per month, out of which so long as the first respondent being the legally wedded wife of the revision petitioner as the suit/original petition for divorce is still pending before the Court below, the revision petitioner husband has to make the interim compensation to the first respondent/wife. Insofar as the claim is concerned, as admittedly, the revision petitioner is earning a sum of Rs.10,000/- per month, after the personal expenses and his personal maintenance, he can set apart atleast a sum of Rs.4,000/- per month to the first respondent to maintain herself. The said sum of Rs.4,000/- is a very minimum amount without which she cannot survive in the present economic condition.

20.In that view of the matter, this Court feels that the order

impugned is sustainable, subject to the modification that the interim alimony /interim maintenance directed to be paid every month by the revision petitioner to the first respondent/wife, shall be Rs.4,000/- instead of Rs.5,000/- as ordered by the Court below. Accordingly, this Civil Revision Petition is disposed of with the following directions:

"that the revision petitioner shall pay a sum of Rs.4,000/- per months to the wife as interim alimony / interim maintenance untill further orders or till the decision is taken in the main petition in M.O.P.No.326 of 2015. Such interim maintenance shall be paid on or before 10th day of every succeeding English Calendar month without fail.

21.With these modification of the impugned order dated 22.06.2018 in I.A.No.842 of 2017, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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06.11.2019

Index: Yes

Internet: Yes

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13/14

R.SURESH KUMAR , J.,

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To

The Family Court,
Pondicherry.



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