

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.4429 of 2014

and

MP No.1 of 2014

Vedanayaki

.... Petitioner

versus

Rajarathinam

.... Respondent

Civil Revision Petition filed under Section 115 of Civil Procedure Code against the order and decree passed in I.A. No.26 of 2014 in H.M.O.P. No.113 of 2011 on the file of the Sub Court Nagapattinam, dated 18.06.2014.

For Petitioner

: Mr. P.A. Kadirvel

For Respondent

: Mr. M.Arun for

Mr.A. Sundaravadhanan

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 18.06.2014 passed by the Sub Court, Nagapattinam in I.A. No.26 of 2014 in H.M.O.P. No.113 of 2011.

**Brief facts leading to the filing of the instant Civil Revision
Petition under section 115 of the Civil Procedure Code**

2. The petitioner is the respondent in H.M.O.P. No.113 of 2011 pending on the file of the Sub Court, Nagapattinam. H.M.O.P. No.113 of 2011 has been filed by the respondent for divorce against the petitioner on the ground of cruelty. Pending H.M.O.P. No.113 of 2011, the petitioner filed I.A. No.26 of 2014 under Section 24 of the Hindu Marriages Act, seeking for interim maintenance.

3. By order dated 18.06.2014, the learned Sub Judge, Nagapattinam dismissed I.A. No.26 of 2014 on the ground that the application for interim maintenance was filed belatedly. Aggrieved by the dismissal of I.A. No.26 of 2014 in H.M.O.P. No.113 of 2011, the instant Civil Revision Petition has been filed under Section 115 of the CPC.

4. Heard Mr.P.A. Kadirvel, learned counsel for the petitioner and and Mr.M.Arun, learned counsel for the respondent.

Discussion :-

5. Before the Sub Court, Nagapattinam, the petitioner, who is the wife of the respondent, has sought for a sum of Rs.10,000/- as interim maintenance under Section 24 of the Hindu Marriage Act. As a husband, it is the duty of the respondent to maintain the petitioner as long she is his wife and does not have an independent share of income. In the affidavit filed in support of H.M.O.P. No.113 of 2011, as well as in the counter affidavit filed in I.A. No.26 of 2014, the respondent has pleaded that he was only a daily wage earner. Before the Sub Court, Nagapattinam, the income certificate of the respondent / husband was produced, which discloses that the respondent was earning a monthly income of Rs.3,000/-. The petitioner, at the time of filing of I.A. No.26 of 2014 was aged 40 years and the respondent was aged 51 years. Now the petitioner's age will be approximately 45 years and the respondent's age will be approximately 56 years.

6. It is represented by the learned counsel for the respondent that the respondent is now jobless and he is dependant on his son. However, this Court is of the considered view that as a husband it is his duty to maintain his wife as long as she is his wife, who does not

have an independent share of income.

7. This Court has perused the impugned order. Even though income certificate was produced to disclose that the respondent was earning a monthly income of Rs.3,000/-, the Court below has dismissed I.A. No.26 of 2014 only on the ground that the said application for interim maintenance was filed belatedly, which, according to this Court, is an erroneous order as it is always the bounden duty of the husband to maintain his wife, who does not have an independent share of income.

8. The Trial Court ought to have considered the monthly income earned by the respondent and ought to have awarded some amount of maintenance to the petitioner. Therefore, the dismissal of I.A. No.26 of 2014, in the considered view of this Court, is an erroneous order.

9. This Court, after considering the capacity of the respondent to pay maintenance, is of the considered view that a sum of Rs.1,000/- p.m., will be a reasonable sum, which the respondent is liable to pay as monthly maintenance to the petitioner from the date of filing of I.A.

No.26 of 2014 till the disposal of H.M.O.P. No.113 of 2011.

Conclusion :

10. In the result, the Civil Revision Petition is allowed with the following directions :

1. the impugned order passed by the Sub Court, Nagapattinam in I.A. No.26 of 2014 in H.M.O.P. No.113 of 2011 is hereby set aside;
2. the respondent is directed to pay a sum of Rs.1,000/-p.m., (Rupees one thousand only) as interim maintenance to the petitioner from the date of filing of I.A. No.26 of 2014 till the date of disposal of H.M.O.P. No.113 of 2011; and
3. in view of the long pendency of the H.M.O.P. No.113 of 2011, the Trial Court is directed to dispose of the same within a period of six months from the date of receipt of a copy of this order.
4. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No
Internet: Yes/No
Speaking Order/Non-speaking Order
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ABDUL QUDDHOSE, J.

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To
The Sub Judge,
Nagapattinam.



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