

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3044 of 2019 and
C.M.P.No.19531 of 2019

P.Bhagyalakshmi ... Petitioner

Vs.

P.Karthik ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the docket order dated 24.05.2019 made in unnumbered I.A.SR.No.1612 of 2019 in HMOP.No.2724 of 2018 on the file of the I Additional Family Court, Chennai.

For Petitioner : Mr.M.Deivanandam

ORDER

This revision petition has been filed against the return of petition filed in I.A.Sr.No.1612 of 2019 under Section 19(1)(f) of the Protection of Women from Domestic Violence Act, 2005 before the I Additional Family Court, Chennai in H.M.O.P.No.2724 of 2018, by the wife, who is the respondent in that main HMOP.

2.In the return memo or order, the learned Judge has taken the view that, the petitioner has not quoted the correct provision of law in order to maintain the said petition. As against the said return memo, the present revision has been filed.

2.Mr.M.Deivanandam, learned counsel appearing for the petitioner has taken this Court to some provisions of the Domestic Violence Act, 2005 wherein Section 19 under the head 'Residence Orders' provided for as to what relief such residence orders can be passed by the Magistrate concerned. Under Section 19(1)(f), the Magistrate concerned, in order to secure same level of alternate accommodation for the aggrieved person, can pass suitable order and Section 19(1)(f) reads thus:

"(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman."

3.The learned counsel also submitted that, though there has been no application or petition filed under Section 12(1) of the Act and

no such petition is pending under Section 12 before any Magistrate Court, the petitioner, who appeared party-in-person before the Court below, had filed the present application under Section 19(1)(f) read with Section 26. Section 26 of the said Act reads thus:

“26.Relief in other suits and legal proceedings.-
(1)Any relief available under sections 18,19,20,21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.”

4.Therefore, relying upon these two provisions, the learned counsel would submit that, notwithstanding the fact that, there has been no petition under Section 12 filed or is pending before the Magistrate, nevertheless the aggrieved party can invoke Section 19 of the Act, of course read with Section 26 before any Court like Civil Court, Family Court or Criminal Court, if the aggrieved party is affected, for getting any such relief as enumerated under Section 19(1) of the Act.

5.I have considered the said submissions made by the learned counsel for the petitioner and I have gone through the provisions

referred to above.

6.No doubt, Section 19 can be invoked by the aggrieved person primarily only at the time of pendency of Section 12 application as the language used in Section 19 makes it clear with the following words that "While disposing of an application under sub-section (1) of Section 12'. Therefore, the Magistrate's power to dispose of application or to give relief as enumerated under Section 19 of the Act, would be coupled with a pendency or disposal of the petition under Section 12 already been filed by the aggrieved party and in the absence of any such petition filed and is pending before the Magistrate, he cannot pass orders invoking Section 19 of the Act.

7.However, Section 26 of the Act has provided a relief to the aggrieved party that, notwithstanding the fact that there is no application filed or is pending before the Magistrate Court under Section 12, the aggrieved person can invoke the provisions of Sections 18, 19, 20, 21 and 22 and file necessary petitions to get the relief as has been provided in the said Sections either before a Civil Court or before a Family Court or before a Criminal Court. Therefore, if Section 26 along with Section 19 is invoked by the aggrieved party before any Court which is like Civil Court, Family Court, Criminal Court having jurisdiction over the subject matter, certainly such kind of petitions can

be entertained.

8. Here in the case in hand, even though the petition under Section 19(1)(f) of the Act has been filed by the petitioner, in the said petition, only the provision namely Section 19(1)(f) has been mentioned and Section 26 has not been mentioned.

9. Even though it is the stand of the revision petitioner, as projected by the learned counsel for the petitioner that, while replying to the return memo, by way of compliance, both the provisions i.e., 19(1)(f) as well as 26 of the Act has been extracted and quoted, probably the learned Judge might not have taken the same as a compliance, since still the petition does not contain Section 26. Therefore, the learned Judge might have reiterated the stand that correct provision of law has to be stated. When this was pointed out, the learned counsel for the petitioner would submit that, the petition which has been returned through the impugned order or return memo would be represented by quoting the said provisions viz., 19(1)(f) read with Section 26 of the said Act also and once it is represented, the same can be directed to be entertained by the Court below and to be proceeded in accordance with law.

10.The said stand taken by the learned counsel for the petitioner is hereby recorded and in that view of the matter, this Court is inclined to dispose of this civil revision petition, with the following direction:

That the petitioner shall represent the petition which has been returned through the impugned memo, filed under Section 19(1)(f) of the Protection of Women from Domestic Violence Act, 2005 before the Court below, by making an amendment or correction in the said petition inserting the provision i.e., Section 26 of the said Act also and once such representation with compliance as stated above is made by the petitioner, the same shall be entertained by the Court below and shall be proceeded in accordance with law especially under the provisions of Section 19(1)(f) read with Section 26 of the Domestic Violence Act, 2005.

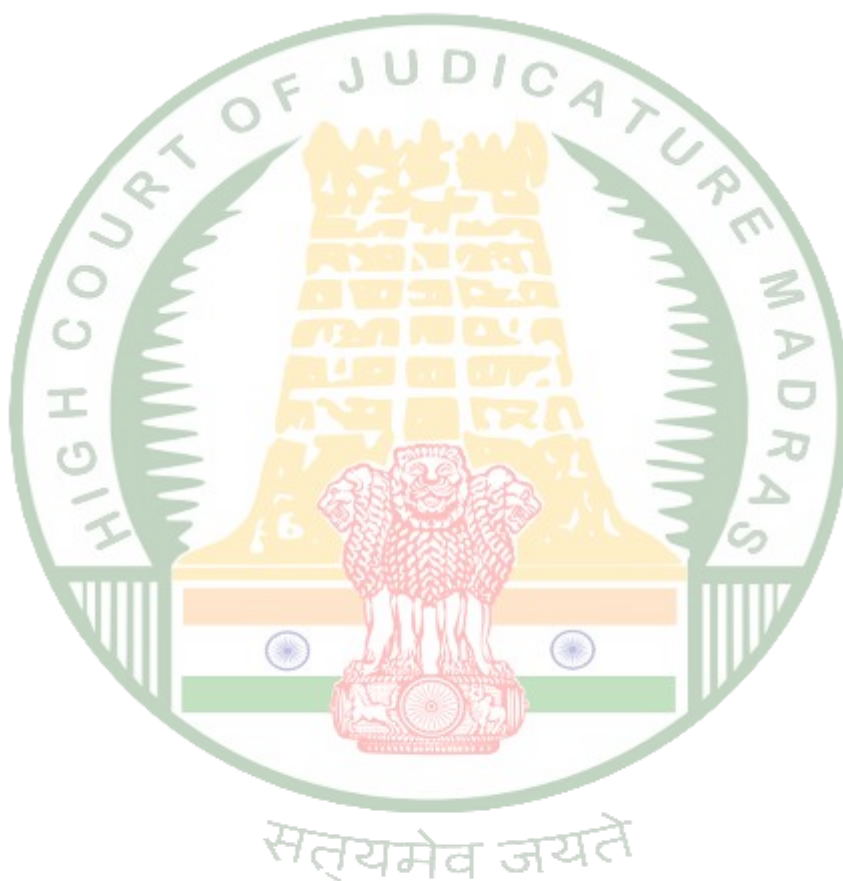
11.With this direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

12.09.2019

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To

The I Additional Family Judge,
Chennai.

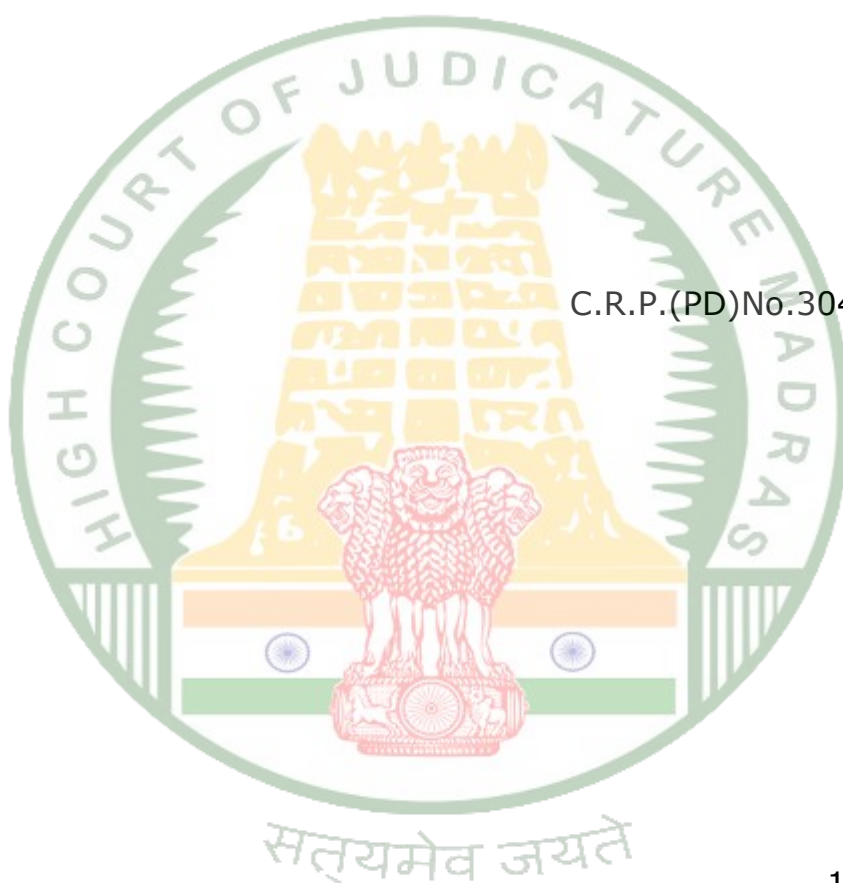


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R.SURESH KUMAR, J.

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