



C.R.P. (PD) No. 278 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P.(PD) No.278 of 2019

Lakshmi Narayanan

...Petitioner

Versus

1. Jaya Sudha
2. L.Jeevan Sai

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the decreetal order and fair order dated 09.11.2018 passed in I.A. No.71/2018 in H.M.O.P. No.131/2016 on the file of the Sub Court, Nagapattinam.

For Petitioner : Mr. P.Haribabu

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed against the order passed in I.A. No.71 of 2018 in H.M.O.P. No.131 of 2016 on the file of Sub Court, Nagapattinam.



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2. The petitioner is the husband. The respondents are the wife and minor son of the petitioner. The petitioner filed a divorce petition in H.M.O.P. No.131 of 2016 on the file of Sub Court, Nagapattinam, on the ground of cruelty and mental illness. There is an allegation that the first respondent wife suffers from some sort of mental disorder and hence the behaviour and attitude of the first respondent were not normal. After the petition was filed by the petitioner for divorce, the first respondent wife filed a petition in D.V.C. No.5 of 2017 before the Judicial Magistrate Court, Sirkali. She also filed an interim application in C.M.P. No.7635 of 2017 before the Judicial Magistrate, Sirkali for interim maintenance. The Court, after going through the facts in detail, found that the petitioner has abandoned his wife and child and neglected to maintain them. Considering the fact that the petitioner is working as Head Master in Panchayat Union Elementary School, the learned Judicial Magistrate directed the petitioner to pay a sum of Rs.13,000/- towards interim maintenance. It is stated that the petitioner has paid the said amount.

3. The respondents thereafter filed a petition in I.A. No.71 of 2018, before the Sub Court, Nagapattinam, where the matrimonial proceeding was pending, to get a further sum of Rs.30,000/- towards maintenance of petitioner's wife and son. In that application, the lower Court passed an order directing the



petitioner to pay a further sum of Rs.15,000/- towards interim maintenance

taking note of the fact that already the wife and child are drawing a sum of Rs.13,000/- from the petitioner. Against the said order, the present Civil Revision Petition is preferred.

4. The learned counsel for the petitioner submitted that the maintenance under Section 24 of the Hindu marriage Act, is unsustainable and the same falls outside the scope and jurisdiction of the learned Subordinate Judge who is hearing the petition for divorce. It is submitted that the wife, though entitled to get financial assistance from the husband to maintain herself during the pendency of proceedings, the Court cannot determine any amount as it wish especially when the petitioner has to repay the housing loan, personal loan apart from other commitments including the burden to maintain his own parents. From the salary slip produced by the petitioner, it shows that the petitioner's take home salary is only Rs.43,348/-. It is stated by the counsel that a sum of Rs.11,800/- is deducted towards personal loan and a further sum of Rs.28,800/- is deducted towards housing loan.

5. When this Court directed the petitioner's counsel to produce the details of the loan so as to ascertain the exact financial commitments of the petitioner in



future, learned counsel for the petitioner, for the reasons best known to him, is unable to produce any document. Assuming that the petitioner is paying a huge sum around Rs.40,000/- towards few loans obtained by him earlier, those are all the amounts which are spent on his account as the petitioner had enjoyed the benefit in the form of an asset created out of the loan amount. Apart from paying a sum of Rs.43,314/-, the trial Court has also found that the petitioner has other income.

6. It is no doubt true that the quantum of maintenance should be considered based on the position and status of the parties. A reasonable amount towards food, clothing and shelter for the dependants should be taken into account. The expenses towards medical attendants, education and other prospects of minor cannot be ignored. In this case, the petitioner's income is not disputed. Similarly, it is not the case of the petitioner that the wife is also earning any income. The respondents are the wife and son of the petitioner. Therefore, at least from the take home salary, the petitioner can spend at least 50%.

7. In the absence of the learned counsel for the respondent and the materials that are available, this Court is inclined to hold that the petitioner shall



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pay a further sum of Rs.8,000/- per month as maintenance apart from the amount the petitioner was directed to pay by the learned Judicial Magistrate in C.M.P. No.7635 of 2017 in D.V.C. No.5 of 2017. Accordingly, the order in I.A. No.71 of 2018 in H.M.O.P. No.131 of 2018, on the file of Sub Court, Nagapattinam, is hereby set aside and modified by directing the revision petitioner to pay a further sum of Rs.8,000/- per month as maintenance to the respondents from the date of petition filed in I.A. No.71 of 2018. The said payment will be in addition to a sum of Rs.13,000/- per month which was earlier directed to be paid by the Judicial Magistrate, Sirkali, in C.M.P. No.7635 of 2017 in D.V.C. No.5 of 2017.

8. With these above directions, this Civil Revision Petition is partly allowed. No costs.

26.11.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order
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Copy to:

The Principal Sub Judge, Nagapattinam.



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S.S.SUNDAR, J .,

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