

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2021

CORAM

THE HON'BLE MR. JUSTICE C.V. KARTHIKEYAN

**C.R.P. (PD) No. 677 of 2021
and
C.M.P. No. 5827 of 2021**

Mr. M.Shakthipriyan

... Petitioner

-VS-

Mrs. K.Saranya

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the order dated 12.10.2020 made in I.A. 76/2017 in H.M.O.P. No. 124/2016 on the file of the Learned Sub Judge of Bhavani and by allowing the Civil Revision Petition.

For Petitioner : Mr. B.Mohan,
Mr. B.M.Subash
Mr. Alihassan Khan

For Respondent : Mr. Kaithamalai Kumaran

ORDER

The Civil Revision Petition has been filed questioning the order dated 12.10.2020 in I.A. No. 76 of 2017 in H.M.O.P. No. 124 of 2016 pending on the file of the Sub Court at Bhavani.

2. The said H.M.O.P. No. 124 of 2016 had been filed by the Petitioner herein under Section 12(2)(iii) of the Hindu Marriage Act, 1955, calling upon the Court to pass a order dissolving the marriage solemnized on 07.11.2013 and registered on 08.11.2013 on the ground of non-consummation and cruelty, and also for costs of the petition.

3. The said H.M.O.P. is pending. Counter has also been filed.

4. Pending the said H.M.O.P., the Respondent/Wife had filed I.A. No. 76 of 2017 under Section 24 of the Hindu Marriage Act, 1955, seeking interim maintenance pending disposal of the main petition. The order passed in the said interlocutory application is now assailed in the present Civil Revision Petition.

5.The Civil Revision Petition had come on earlier occasions, however, the Learned Counsel for the Petitioner had taken time.

6. I Had the benefit of examining the records.

7. In the order passed, the Learned Judge, while examining the request for payment of maintenance of Rs.40,000/- (Rupees Forty Thousand only) a month, had directed that interim maintenance of Rs.15,000/- (Rupees Fifteen Thousand only) per month to be paid to the Respondent herein from the date of filing of the said application, viz., I.A. No. 76 of 2017, till the disposal of the H.M.O.P. This order had been passed on 12.10.2020. It is evident that the present Petitioner herein had not paid any amount towards maintenance. On the other hand, he had questioned the said order which had been passed after examining the witnesses, viz., the Respondent herein as P.W.-1 and the Petitioner herein as R.W.-1 and also a Doctor, who was invited by the Petitioner to tender evidence, as R.W.-2 and also a series of documents including the opinion of the doctor.

8. I must express my concern on the allegations made by the present Petitioner against the Respondent in the H.M.O.P., and inviting a Doctor to give opinion about whether the Respondent herein is capable of conceiving a child in an application filed seeking interim maintenance. The said evidence has to be struck off in entirety. But, to the credit of the Learned Judge, it must be pointed out that the cross examination of R.W.-2/Doctor has been extracted in the order wherein, quite fortunately, the Learned Doctor has stated that the Respondent herein is capable of conceiving a child and there is no medical infirmity which could be detected on examining her. That removes the allegation raised by the present Revision Petitioner against the Respondent herein.

9. It is seen that the Petitioner herein, who had taken steps to produce as a witness, a Doctor, had however not produced a basic document, viz., his Income Certificate. He had also not produced any documents to show the expenses which he incurs during the course of a particular month, but he had produced a rental agreement of the year 2013 and a copy of the equated monthly installments details. If loan had been obtained by the Petitioner herein then he has invited the burden to repay the loan. He cannot claim to withhold

the payment of maintenance to his wife on that ground. I am sure that he would measure his wife on a higher standard than the persons from whom he had obtained loan. The Learned Judge, who has examined all these aspects, had also considered the cost of living and price index and finally fixed a sum of Rs.15,000/- (Rupees Fifteen Thousand only) as maintenance payable every month. I find no infirmity in the said order.

10. The Revision Petitioner has to suffer an order of dismissal.

11. It is reiterated that the Revision Petitioner is under obligation to pay the maintenance amount from the date of filing of the application in I.A. No. 76 of 2017 every month. If there is arrears of maintenance, the Respondent herein is at liberty to proceed in accordance with law for recovery of the arrears amount.

12. Mr. Kaithamalai Kumaran, Learned Counsel had entered appearance as Caveator, but was not called.

13.The Revision Petition is dismissed. No order as to costs.
Consequently, the connected Miscellaneous Petition is closed.

16.04.2021

vjt

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order

To

The Sub Court,
Bhavani.



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C.V. KARTHIKEYAN, J.

vjt



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