

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.2130 of 2018

Mary Amala

... Petitioner

Vs

Santha Reuban

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 31.10.2017 passed in I.A.No.314 of 2017 in O.P.No.3827 of 2012 on the file of the Learned V Additional Family Judge at Chennai.

For Petitioner : Mr.Manoj Sreevalsan

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed to set aside the order dated 31.10.2017 passed in I.A.No.314 of 2017 in O.P.No.3827 of 2012 on the file of the Learned V Additional Family Judge at Chennai, thereby partly dismissing the petition for interim maintenance.

2. The petitioner is the wife and the respondent is the husband. The respondent filed petition for divorce on the ground of cruelty. The divorce petition has been filed in the year 2008 before the Family Court, Madurai. In the year 2010, the petitioner filed the petition for interim maintenance for herself and her minor son till the disposal of the divorce petition. According to the petitioner, the respondent is doing Mobile business and his earning huge profits in the name and style of "Tech Life" at Kakkathopu Street, Madurai-1 and "Chennai Mobiles" opposite to Egmore Court, Pudupet, Chennai. In fact, there are nearly 20 employees are working under him in their monthly salary.

3. Though the Court below considered the interim maintenance petition of the petitioner and failed to consider the interim maintenance of her minor son. The Court below dismissed insofar as the interim maintenance of minor son, for the reason that the minor son is not a party to the petition. Under Section 49 of the Divorce Act provides that the petition is a minor, he or she shall sue by his or her next friend to be appointed by the Court. No approval was prayed by the petitioner to represent her minor son and the minor son is not at all a party to the petition. Hence, the petitioner is not entitled for any maintenance for her minor son.

4. In this regard, the learned counsel for the petitioner relied upon the Judgment in *(1997)7 SCC 7 the case of Jasbir Kaur Sehgal -vs- District Judge, Dehradun*. In which, the Hon'ble Supreme Court of India has given wider interpretation under Section 24 of the Hindu Marriage Act. He also relied upon the Judgment in the case of *Sunil Babu -vs- Mariya V.Joy (MANU/KE/0485/2013)*, in which the Kerala High Court held that the Section 36 of Divorce Act has to be given a wider interpretation to include the maintenance for the child.

5. In the case of hand, the petitioner got marriage the respondent on 13.07.2005 as per Christian Rites and Customs. Due to their wedlock a male child was born. Thereafter, the petitioner and her minor son were driven out from the matrimonial home and they are living separately.

6. While being so, the respondent filed the petition for divorce on the ground of cruelty in the year 2008 before the Family Court, Madurai. Thereafter, the divorce petition was transferred to the file of V Additional Family Court, Chennai. Even while pending the divorce petition on the file of the Family Court, Madurai in the year 2010 the petitioner filed the petition for interim maintenance till the disposal of the divorce petition for herself and also for her minor son. However, the respondent manage to drag the interim maintenance petition for the period of 7 years and only on 31.10.2017 it was ordered.

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7. Accordingly, the respondent is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) per month as interim maintenance to the petitioner till the disposal of the divorce petition and insofar as the

maintenance to the minor son was rejected for the above said reasons. After the interim maintenance order dated 31.10.2017 the respondent left the divorce petition without pursuing the same and as such it was dismissed for default. Subsequently, the respondent do not take any steps to restore the divorce petition on fail. As rightly pointed out by the learned counsel for the petitioner and also the Judgment made all over the Supreme Court of India the minor son also entitled for maintenance.

8. On perusal of the counter filed by the respondent revealed that he is running Mobile Service Centre at Madurai and Chennai. Therefore, he is having a notional income and he has to maintain her minor son. Therefore, this Court inclined to order to pay the interim maintenance of Rs.5000/- (Rupees Five Thousand only) from the date of petition till the disposal of the divorce petition. However, the learned counsel for the petitioner would submit that after passing order in the interim maintenance application the respondent left the matter to dismiss for default. Therefore, till the disposal of the divorce petition the petitioner is also entitled to maintenance for her son at Rs.5000/- (Rupees Five Thousand only) per month.

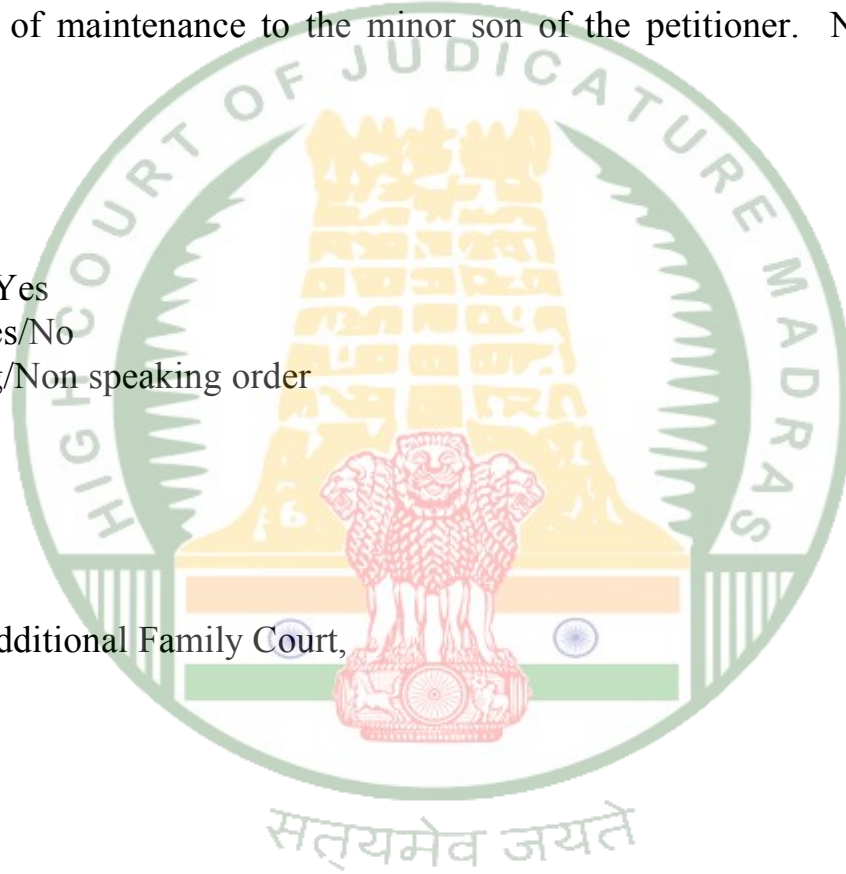
9. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.314 of 2017 in O.P.No.3827 of 2012 dated 31.10.2017 on the file of V Additional Family Court, Chennai is set aside, so far as the rejection of maintenance to the minor son of the petitioner. No order of costs.

23.04.2021

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
rna

To

The V Additional Family Court,
Chennai.



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G.K.ILANTHIRAIYAN. J,

rna



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