

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.1932 of 2021
and C.M.P.No.16169 of 2021
(Through Video Conference)

D. Sathish Kumar

.. Petitioner

Vs.

D. Girija

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Judgment and decree passed in I.A.No.260/2018 in H.M.O.P.No.577 of 2017 c/w H.M.O.P.No.470/2017 dated 14.11.2019 on the file of the Subordinate Judge, Poonamallee and dismiss the said application by allowing the C.R.P. with cost.

For Petitioner : Mr.C.S.Saravnan
For T.Arivarasan

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.260 of 2018 in H.M.O.P.No.577 of 2017.

2. The petitioner filed H.M.O.P.No.577 of 2017 against the respondent under Section 13(1)(I-a) of Hindu Marriage Act, 1955 for divorce. The

respondent filed H.M.O.P.No.470 of 2017 under Section 9 of Hindu Marriage Act against the petitioner for restitution of conjugal rights. The respondent filed I.A.No.260 of 2018 seeking for a direction to the petitioner to pay a sum of Rs.10,000/- per month, as maintenance for her and a sum of Rs.15,000/- per month for her child's maintenance. Apart from the maintenance, a claim was made for Rs.25,000/- towards litigation expenses and Rs.50,000/- towards school fees of the child by the petitioner.

3. This petition is contested by the petitioner. The learned Subordinate Judge, Poonamallee, on considering the rival contentions, directed the petitioner to pay a sum of Rs.10,000/- per month (Rupees Ten Thousand only) as interim maintenance to the respondent and her child and ordered to pay school fees and other educational expenses of the child, till the disposal of H.M.O.P.No.577 of 2017. Aggrieved over the said order, the present Civil Revision Petition is preferred.

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4. The learned counsel for the petitioner submitted that due to the matrimonial dispute between the petitioner and the respondent, the respondent has given a police complaint against the petitioner. The petitioner was

remanded and kept in jail for 23 days. Previously, he was working as Assistant Professor in Vel Tech Engineering College and after his remand and incarceration in prison, he became jobless. The respondent is now employed as a Software Engineer and she is earning. In such circumstances, the order of learned Subordinate Judge, Poonamallee directing the petitioner to pay a sum of Rs.10,000/- per month (Rupees Ten Thousand only) as interim maintenance is beyond the capacity of the petitioner to pay. Therefore, the petitioner prays for setting aside the order of the learned Subordinate Judge, Poonamallee and for dismissing the petition filed for interim maintenance.

5. Considered the submissions made by the learned counsel appearing on either sides and perused the records.

6. The order of the learned Subordinate Judge, Poonamallee shows that both the parties have not produced any documents to show their assets and liabilities. The petition was tested on the basis of averments made in the petition and the counter affidavit. There is no evidence produced by the petitioner to show that his wife is employed as a Software Engineer and earning. Similarly, the respondent has also not produced any document to show

that the petitioner is employed and earning. However, being the husband of the respondent and father of the child, the petitioner is obligated to maintain his wife and child. Both the petitioner and the respondent are highly educated. It is not hard for the petitioner to find any other employment. The petitioner is duty bound to maintain his wife and child and therefore, considering the present economic scenario, the grant of maintenance of Rs.10,000/- per month to the wife and child cannot be considered as excessive.

7. Therefore, this Court finds no reason to interfere with the order of the learned Subordinate Judge, Poonamallee and confirms the same. The learned counsel for the petitioner submitted that he may be granted some time for clearing the arrears. In view of the request made by the petitioner, the petitioner is given three(03) months time to clear the arrears i.e., the maintenance amount ordered, from the date of application till the disposal of the petition.

8. The petitioner is also directed to pay the monthly maintenance amount without any default, commencing from October 2021. If the petitioner is able to prove that he is not employed and his wife is employed and earning money, it is always open for him to approach the Trial Court for modification of the order

granting interim maintenance. Accordingly, this **Civil Revision Petition stands Disposed** of. No costs. Consequently, connected miscellaneous petition is closed.

07.10.2021

Index : Yes/No
Speaking order/Non Speaking Order
sts/RAP

To:

The Subordinate Judge,
Poonamallee



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G.CHANDRASEKHARAN, J.,

sts/RAP



Order made in
C.R.P.(PD).No.1932 of 2021

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