



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No.2794 of 2019

and

C.M.P. No.18305 of 2019

V. Nirmala

.. Petitioner/Respondent/Petitioner

Vs.

S. Panneer Selvam

.. Respondent/Petitioner/Respondent

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Docket order dated 02.02.2019 in I.A.No.Nil of 2018 and number the interim application filed on 16.08.2018 in O.P. No.4193 of 2010 on the file of the learned II Additional Family Judge, Chennai.

For Petitioner ... Mr.S.Sabrarish for
Mr.S. Kingston Jerold
For Respondent ... No appearance

O R D E R

The Civil Revision Petition has been filed praying to set aside the Docket order dated 02.02.2019 and number the interim application filed on 16.08.2018 in O.P. No.4193 of 2010 on the file of the learned II Additional Family Judge, Chennai.

2. The case of the petitioner is that the petitioner herein is the wife and the respondent herein is the husband who got married on 09.07.2001 at S.S. Mahal, Retteri, Near Kolathur, Chennai as per Hindu Rites and Customs in the presence of friends and relatives of both the families. Out of the wedlock, two male children were born to them. Due to the misunderstanding between the husband-respondent and the wife-petitioner, the husband-respondent had filed the HMOP No.4193 of 2010 against the wife-petitioner herein for dissolution of marriage on the ground of cruelty as the wife-petitioner wanted to live a luxurious life beyond the husband's-respondent means. In the meanwhile, the wife-petitioner has filed a complaint under provisions of protection of women under Domestic Violence Act, before the learned V Metropolitan Magistrate, Egmore in C.C.No.259 of 2011. Thereafter, the wife-petitioner has filed M.P. Nos.749 to 752 of 2011 seeking for interim maintenance and directions to the husband-respondent. After perusing the entire oral and documentary evidence, the learned Judge directed vide



order dated 29.04.2011, the husband-respondent to pay Rs.10,000/- to the wife-petitioner as the interim maintenance till the disposal of the main petition and rejected other prayer as the related documents were not produced before the Court below. Being aggrieved, the husband-respondent had preferred an appeal in C.A. No.126 of 2011 before the learned VI Additional Sessions Judge, Chennai. The same was dismissed by order dated 20.01.2012 by confirming the order of interim maintenance. Thereafter, the wife-petitioner has filed an Unnumbered IA before the Court below seeking for interim stay in the proceedings of the main HMOP as the husband-respondent has not complied with the order of interim maintenance of Rs.10,000/- to be payable to the wife-petitioner herein. However, the Court below without considering the aforesaid facts and circumstances, closed the petition as infructuous. Hence this Civil Revision petition.

3. The learned counsel for the petitioner would submit that even though the wife-petitioner has got the favourable orders dated 29.04.2011 and 20.01.2012 by way of M.P. Nos.749 to 752 of 2011 which was filed by the wife-petitioner herein and C.A. No.126 of 2011 which was filed by the husband-respondent, the maintenance amount has not been paid so far by the husband-respondent herein. As there is an arrears of maintenance amount for the past 7 years and the husband-respondent has failed to perform his family duty in paying the maintenance amount to his wife and children, the wife-petitioner has filed an unnumbered IA for stay of all proceedings in the Main HMOP. However, the petition is closed infructuous as not pressed. Hence, this Civil Revision petition has been filed to dispose of the petition on merits.

4. Heard, the learned counsel for the petitioner and perused the material available on record.

5. On a perusal of the record, it is seen that the unnumbered I.A has been filed for stay of all further proceedings in main HMOP No.4193 of 2010 since the husband-respondent has not complied with the order dated 24.09.2011 passed in M.P. Nos.749 to 752 of 2011 in C.C. No.259 of 2010 on the file of V Metropolitan Magistrate, Egmore, Chennai -8 and the same was confirmed in C.A. No.126 of 2011 by order dated 20.01.2012. In the I.A SR stage, the petition was adjourned on various dates for maintainability and it was further adjourned for the absence of the parties one after another alternatively during the hearings. Finally, the petition was closed as infructuous by docket order dated 02.02.2019 as the wife-petitioner would not press that petition which was also recorded in the docket order dated 21.01.2019. While looking into prayer of the wife-petitioner in the aforesaid unnumbered I.A, it is



seen that the interim maintenance payable to her is not complied with even though there were directions of the Courts below to the husband-respondent. Under such circumstances, despite the wife-petitioner has not received the amount of Rs.10,000/- every month as interim maintenance from her husband-respondent from the month of April 2011, till as on date, the wife petitioner can get alternative remedy by approaching the Court below seeking for a direction to her husband to pay the interim maintenance of Rs.10,000/- every month. Apart from that the wife-petitioner cannot seek stay in further proceedings in the main HMOP No.4193 of 2010 for not paying the interim maintenance to her. Further, the unnumbered I.A is closed as infructuous as there is no further adjudication while the petitioner has represented that the application will not be pressed. However, even the main HMOP. No.4193 of 2010 is of the year 2010, the litigation between the parties are prolonging till now and two sons of them are studying in the Colleges, this Court directs the Court below to proceed with the Trial on the next hearing and complete it as expeditiously as possible and dispose the case within a period of Six months from the date of receipt of copy of this Order. Further, as it is represented by the learned counsel for the petitioner that HMOP No.2690 of 2019 which was also filed for conjugal rights is also pending and the same shall be tried together along with this HMOP No.4193 of 2010.

6. With the above directions, the Civil Revision petition is disposed of. Consequently, connected miscellaneous petition is closed if any. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The II Additional Family Judge,
Chennai.

+1cc to Mr.S.Sabarish, Advocate Sr.No.5076

C.R.P. No.2794 of 2019
and
C.M.P. No.18305 of 2019

AAB(CO)
NR 16/04/2021