

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.02.2021
CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.4045 of 2019
and
C.M.P.No.26558 of 2019

Praveen Kumar .. Petitioner
Vs.
Priyadharshini .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order dated 12.06.2019 in I.A.No.203 of 2018 in H.M.O.P.No.16 of 2018 on the file of the Subordinate Judge, Ponneri.

For Petitioner : Mr.C.Prakasam
for Mr.C.S.Saravanan
For Respondent : Mr.V.Manimaran

O R D E R

The Civil Revision Petition has been filed by the petitioner to set aside the fair and final order dated 12.06.2019 in I.A.No.203 of 2018 in H.M.O.P.No.16 of 2018 on the file of the Subordinate Judge, Ponneri.

2. The respondent herein/ wife filed HMOP.No.16 of 2018 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 on the file of the Subordinate Judge, Ponneri. The said petition was agitated by the petitioner herein/ husband by filing a counter. In the counter petition the petitioner herein/ husband has stated that the claim made by the respondent wife that he is the owner of two mobile phones selling out lets and also doing a business of paper cup manufacturing, and earning Rs.40,000/- p.m and he has done U.G. in Business Administration are false. The respondent and her family members after enquiring well about the petitioner herein had arranged for the marriage and there was no necessity for the petitioner to hide his qualification. After the petitioner was married to the respondent, she did not want to live a joint family and wanted the petitioner to come to Chennai and lead a life in Chennai. She does not want the petitioner to be a poojari and perform poojas in the temple. It is the further case of the petitioner that the respondent wife used to leave

the matrimonial house and they have to bring her back to the matrimonial home. He also submitted that all the averments are fabricated and she did not want to live with the petitioner.

3. It is the further case of the petitioner that a male child was born on 06.05.2014 and she did not returned to the petitioner's house and avoided to show the child and after that came to know that the child is suffering with Autism. The respondent or her parents did not take any steps for re-union of the petitioner and the respondent and she has not shown any interest to live with the petition, but, now she filed a petition for restitution of conjugal rights only to harass the petitioner.

4. In the meanwhile, the respondent/ wife filed I.A.No.203 of 2018 seeking for a direction to direct the respondent to pay Rs.25,000/- as interim maintenance for her mentally retarded son who suffers from autism, claiming that she has taken treatment for the child for the past 3 years at Avvai Kappagam at Washermenpet and also taking treatment for speech therapy. Hence, for the purpose of treatment more money has been spent by the petitioner and she is in need of money for further treatment. She had also produced the disability certificate of the male child, which shows that the child is suffering from Autism and suffers 50% disability. Hence, for the further treatment and maintenance of the child and herself the respondent wife has claimed an interim maintenance of Rs.25,000/-.

5. The husband has filed a counter against the said petition stating that the wife is working as a Receptionist in a Hospital and suppressing her employment she has filed this petition for interim maintenance. He also further stated that the respondent wife has went away from the matrimonial home and avoided to return back by stating one reason or the other. The claim with regard to business and earning are totally false and the petitioner is working as a poojari in a temple and not earning Rs.50,000/- as alleged by the respondent wife. He is earning only Rs.4,000/- to Rs.5,000/- per month and with the said amount he has to take care of his parents also. On the above facts he sought for dismissal of the interim maintenance petition.

6. The court below have considered the rival submissions and allowed the petition and the petitioner herein was directed to pay maintenance of Rs.15,000/- p.m to the respondent herein on or before 7th of every English Calendar month from the date of petition till the date of disposal of the main HMOP. Aggrieved by the said order the husband, the petitioner herein filed this Civil Revision Petition.

7. The learned counsel for the petitioner submitted that the petitioner is only a poojari and earning not more than Rs.4,000/- to Rs.5,000/- p.m and he is in need of money to take care of his parents. He also submitted that the respondent had left the matrimonial home by herself and she has not allowed the petitioner to see his son. The respondent has not produced any proof to show the earnings of the husband. He also submitted that the proof of treatment in Ex.P1 and Ex.P2 were produced before the court below but has not produced the bills that has been paid by her. The petitioner herein is not earning a sum of Rs.50,000/- p.m as claimed by the respondent to pay an interim maintenance of Rs.15,000/-. Hence, he prays to set aside the said order in I.A.No.203 of 2018.

8. The learned counsel for the respondent wife submitted that she is not working anywhere. She has to take care of the son and take him to school or for other development centres, so she is not in a position to work anywhere.

9. Heard the learned counsel on either side and perused the materials on record.

10. It is seen that the petitioner and the respondent got married on 13.02.2013 at Sri Muthu Palaniappan Valliammai Kalyana Mandapam, Kangeyam and a male child was born on 06.05.2014. Both the parties have not given any valid materials to show what is the earning of the other party. The respondent wife had stated that the petitioner was earning Rs.40,000/- in the two mobile phone out lets and was also running a business of paper cup manufacturing and only due to the harassment made by the family members of the petitioner she had left the matrimonial home and further submitted that false claim were made regarding his qualification during the marriage. She further submitted that a male child was born and she has not been taken back to the petitioner's house. But the husband has submitted that he was ready and willing to take her back, but, the respondent wife was not interest to live with the petitioner.

11. Be that as it may, this court is of the view that the husband is duty bound to maintain a wife and child that too the child is special child suffering from autism and mental disability of 50%. The husband has not shown any concern for the child. Even though there is no relationship between the husband and wife, both the parties are responsible for bringing up the child. The respondent has to take the child for treatment and has to spend more money for that, but she is not in a position to go for a work for making money by leaving the child. Even if she is working it would be for her livelihood and to maintain the child, when the husband is not maintaining the child, it is necessary for the wife to go for work. The

fact that the father is duty bound to maintain the child is not in dispute and neither the petitioner nor the respondent had produced any evidence to show the earnings of the other side.

12. This court is of the view that the court below has considered the fact that for a special child's treatment and other expenses definitely mother needs money and she also needs money for day to day expenses, on the above grounds the court below awarded Rs.15,000/-. This court do not find any infirmity in the order passed by the court below. Accordingly, the petitioner herein is directed to pay the said amount to the respondent within stipulated period as per the order of the court below.

13. In fine, this Civil Revision Petition is dismissed and the order dated 12.06.2019 in I.A.No.203 of 2018 in HMOP.No.16 of 2018 on the file of the learned Sub-Judge, Ponneri is confirmed. No costs. Consequently, the connected miscellaneous petition is closed. The arrears of amount shall be paid by the husband in instalments which can be worked out before the lower court.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

dsa
To

The Subordinate Judge, Ponneri.
1.

+1cc to Mr.C.Prakasam, Advocate SR.No. 9048

+1cc to M/S.V.Amuthavalli, Advocate SR.No. 9105

C.R.P.No.4045 of 2019

and

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A.SK(24.03.2021)

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