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CRP.PD.No.69/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP.PD.No.69/2022 & CMP.No.420/2022

(Heard through Video Conferencing)

S.Valliyammai @ S.Rathika

... Petitioner

Vs

M.Sankaralingam @ M.Shankar

... Respondent

Prayer: Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 18.09.2021 made in IA.No.04/2020 in HMOP.No.17/2015 on the file of the learned Judge, Family Court, Erode.

For Petitioner : Ms.R.Vigneshwari
for Mr.M.Guruprasad

ORDER

- (1) This Revision is directed against an order of the learned Family Judge, Erode, dismissing the application filed by the wife seeking striking of the petition filed for divorce by the husband on the ground



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- (2) of non-compliance with the orders of interim maintenance.
- The Original Petition was filed by the husband in the year 2015 seeking divorce on the ground of cruelty. It appears that there was an order for payment of interim maintenance and the husband defaulted in paying the interim maintenance. It is not in dispute that the husband has paid certain amounts and he claimed that he could not pay the balance due to the lock down enforced. He has also given an undertaking to pay the amount at the earliest.
- (3) The learned Judge, Family Court, Erode, took note of the said undertaking and the fact that the application in IA.No.4/2020 has been filed when the HMOP was posted for filing of the written arguments by the wife/petitioner herein and dismissed the application on the ground that it is belated and it is open to the wife to seek execution of the order of interim maintenance.
- (4) No doubt the Court has the power to strike of the Original Petition if the husband has not obeyed the order for payment of interim maintenance. But, exercise of such power is not automatic. It is open to the Court to exercise proper discretion and in appropriate cases



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refuse to exercise the power also.

(5) I find that the Family Court has exercised its discretion properly to conclude that the default is not wilfull and therefore, it does not warrant serious consequences of striking of the petition. Hence, I do not think I should interfere with the order of the Family Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

(6) Hence, the Revision fails and it is accordingly, **dismissed**. It is open to the petitioner/wife to execute the order of interim maintenance. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2022

AP

Internet : Yes

Index : No

Speaking order: Yes



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R.SUBRAMANIAN, J.

AP

To

The Judge
Family Court, Erode.

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