



CRP.3986 / 2018 , 784 and 785/2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	14.07.2022
PRONOUNCED ON	:	05.12.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP.784 of 2015 and 785 of 2015

CRP.3986 of 2018

and connected miscellaneous petition.

M.B.SamsonKirubakaran

..Petitioner/Respondent/Petitioner

Vs

S.RoselinTrinita

Respondent/Petitioner/Respondent

Prayer CRP.3986 of 2018 : Civil Revision Petition filed praying to strike off I.A.No.600/2018 in I.D.O.P.No.106/2013 on the file of the learned Principal Judge, Thiruvallur District.

Prayer in CRP.No.784 of 2015: Civil Revision Petition filed against the order passed by the learned Principal District Judge, Thiruvallur in I.A.No.1192 of 2013 in I.D.O.P.No.106 of 2013 dated 21.11.2014.



CRP.3986 / 2018 , 784 and 785/2015

Prayer in CRP.No.785 of 2015:- Civil Revision Petition filed against the order passed in I.A.No.885 of 2013 in I.D.O.P.No.106 of 2013 dated 21.11.2014.

For Petitioner : Mr.R.Dineshkumar

For respondent : Mr.A.Prabakaran

COMMON ORDER

In the above three revision petitions, revision petitioner is the husband and respondent is the wife. Revision petitioner/husband filed I.D.O.P.No.106 of 2013 for divorce. In the said IDOP, husband filed I.A.No.885 of 2013 for interim custody of the female child born to them. Wife filed I.A.No.1192 of 2013 for interim maintenance of Rs.10,000/- each to her and her female child and also Rs.1,00,000/- for litigation expenses.

2. The allegation of the husband is that when his wife was pregnant, in July 2010, she went to her parents house and has not returned back. It is alleged that when he visited wife's place in response to her call on her



CRP.3986 / 2018 , 784 and 785/2015

birthday, he was abused and not permitted to see his child. Finding that he lost all hopes of living a peaceful and happy life, he said to have filed IDOP and sought custody of the female child.

3. On the other hand, denying the allegations of her husband, wife/respondent filed counter in IDOP stating that on 27.3.2011, on the pretext of seeing the child, petitioner/husband came to her maternal home along with his friends and assaulted her father, brother, damaged household things. Further, in the IDOP case, she filed petition to transfer the OP before this court and the case was transferred and she submits that she spent a huge amount towards litigation expenses. She claims interim maintenance to look after the girl child.

4. The learned Judge, after determining the issues before him, granted visitation right to the husband to see his daughter once in a month. Further, the learned Judge directed the husband to pay Rs.5000/- as interim alimony to the wife for maintenance of the girl child from the date of O.P., till the date of disposal of the O.P.



CRP.3986 / 2018 , 784 and 785/2015

5. The revision petitioner/husband, being aggrieved by the directions of the learned Judge, over visitation right and interim alimony filed CRP.784 and 785 of 2015.

6. It is submitted by the learned counsel for the revision petitioner/husband that respondent/wife is employed and her father is a heart patient and so they are not in a position to take care of the child, whereas, the petitioner's parents are well educated and retired from Government's service and they will take care of the child. The petitioner therefore, assailed the direction of the learned Judge who ordered for visiting the child once in a month on 1st Sunday and submitted that father is the natural guardian and depriving the custody is not correct.

7. As far as direction to the petitioner to pay Rs.5000/- per month for maintenance of his child is concerned, it is submitted by the learned counsel for the revision petitioner that due to various litigations, he has to attend several court hearings and he is not in a position to attend to his work and he is without job and so he could not pay Rs.5000/- from the



CRP.3986 / 2018 , 784 and 785/2015

date of O.P.

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8. The revision petitioner/husband filed CRP.No.3986 of 2018 before this court on 05.12.2018. In this revision petition, he seeks to struck off I.A.No.600 of 2018 filed by the wife seeking to set aside the exparte decree of divorce granted in favour of the petitioner in IDOP.No.106 of 2013.

9. A careful perusal of the typed set of papers would go to show that between the husband and wife, series of complaints and petitions filed before various forums. They also approached this court for transfer of I.D.O.P., and also for disposal of I.As and IDOP within a time frame. This court, by order dated 11.09.2017 directed the District cum Sessions Court, Thiruvallur, to dispose of the pending IAs and IDOP within one month. On 25.04.2018, the learned Judge passed the decree of divorce as the respondent called absent, she was set exparte.

10. It is contended by the learned counsel for the revision petitioner that the respondent/wife abstained from attending the hearings on many



CRP.3986 / 2018 , 784 and 785/2015

occasions which resulted in passing an ex parte decree. After the decree was passed, marriage has also been fixed for the petitioner/husband. In such situation, the respondent/wife with ulterior motive filed an application in I.A.No.600 of 2018, to set aside the ex parte decree. The learned counsel submits that revision petitioner/husband has been granted the decree of divorce. The respondent/wife who remained absent in the hearings, cannot seek to set aside the ex parte decree of divorce. Therefore, the learned counsel sought to struck off the I.A.No.600 of 2018 in IDOP.No.106 of 2013.

11. Heard both sides and perused the typed set of papers.

12. After consideration of the facts and events as narrated above, it is seen that subsequent to the orders passed in IA.Nos.885 of 2013 and 1192 of 2014 by the Principal District Judge, Thiruvallur, which is the subject matter of issue in CRP.Nos.784 and 785 of 2015, by order dated 25.04.2018, decree of divorce has been granted as sought for by the revision petitioner. The said decree of divorce has been passed setting the wife ex parte as she failed to appear for continuous hearings. But



CRP.3986 / 2018 , 784 and 785/2015

thereafter, she filed petition in I.A.No.600 of 2018 seeking to condone the delay in filing the set aside petition. Against which, CRP.No.3986 of 2018 has been filed by the revision petitioner/husband seeking to struck off the said IA.600 of 2018. This court, at the time of admission of CRP.No.3986 of 2018, granted interim stay of all further proceedings in I.A.No.600 of 2018 in IDOP.No.106 of 2013 till 29.01.2019. But thereafter, the petitioner has not come before this court for extension of stay.

13. In the backdrop of the facts of this case, the submissions made by the learned counsel for the revision petitioner/husband before this court is that due to various litigations, the petitioner could not able to do his job and after decree of divorce, he got married the second time and it is difficult to pay alimony to the respondent/wife.

14. On the other hand, the learned counsel for the respondent/wife submitted that she was being over-burdened by the growing expenses, with no support from the husband.



CRP.3986 / 2018 , 784 and 785/2015

15. With respect to the contention of the husband that he had no income and unable to maintain the respondent and the issue as regards the maintenance, it is settled proposition of law that the welfare of the child and its education and maintenance has to be taken note of as a measure of social justice to provide recourse to dependant wives and children for their financial support.

16. Recognising the dire need to have uniformity, consistency, procedural fairness and time efficiency in disposal of maintenance applications, the Supreme Court has recently, in the matter of **Rajnesh v. Neha & Anr. 4 November, 2020 CRIMINAL APPEAL NO. 730 OF 2020** (Arising out of SLP (Crl.) No. 9503 of 2018) *inter alia*, framed guidelines on certain aspects pertaining to payment of maintenance in matrimonial disputes.

17. In the case on hand, the learned Principal District Judge, Thiruvallur, directed the husband to pay Rs.5000/- as interim alimony to the wife for maintenance of the girl child from the date of O.P.



CRP.3986 / 2018 , 784 and 785/2015

Subsequently, the respondent/wife abstained from attending the hearings on many occasions, which resulted in the passing of ex-parte decree of divorce.

18. In any event, admittedly, till date, the revision petitioner/husband has not paid any maintenance amount both to the wife as well as the child which shows that the petitioner is not only interested in the welfare of his wife, but also not taken any care for the welfare of the child also.

19. The child, at present is under the care, custody and protection of the respondent/wife and has been educated. Moreover, when the revision petitioner sought for interim custody and visitation rights, he had not shown any indulgence in visiting the child but keen in getting divorce.

20. On perusal of the records, it could be seen that this court granted interim stay of all further proceedings in I.A.No.600 of 2018 in I.D.O.P.No.106 of 2013 on the file of the learned Principal District Judge,



CRP.3986 / 2018 , 784 and 785/2015

Tiruvallur, till 29.01.2019. Thereafter, this court referred the matter to Mediation. Before the Mediation, parties were not willing to participate in the mediation. Therefore, the matters are before this court.

21. The revision petitioner has successfully dragged on the proceedings without paying any maintenance amount to the child or to his wife. [Section 18 of the Hindu Marriage Act](#), reads as follows :

“18. Maintenance of wife.— (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance.”

22. With a view to settle the law in this regard, the Supreme Court has held that maintenance in all cases (including Section 125 CrPC) is to be awarded from the date on which the application was made before the concerned Court. This was done with a view to prevent a dependent spouse from being reduced to destitution.



CRP.3986 / 2018 , 784 and 785/2015

23. With regard to Enforcement/ Execution of orders of maintenance, the Honourable Supreme Court observed that execution petitions following an order granting maintenance usually remained pending for a long period of time. It recognised that if maintenance was not paid in a timely manner, it would defeat the very object of the social welfare legislation. Accordingly, the Supreme Court directed that an order or decree granting maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1955; Section 20(6) of the Protection of Women from Domestic Violence Act, 2012; Section 128 of CrPC; or under the CPC as may be applicable. It was further held that the order of maintenance may be enforced as a money decree of a civil court as provided by various provisions of the CPC, including provisions for civil detention, attachment of property, etc., more particularly provided in relevant provisions therein.

24. The Apex Court also took note of the practice of striking off the defence of the respondent in the case of non-payment of maintenance, adopted by certain Courts in India. In this regard, it cautioned the Courts



CRP.3986 / 2018 , 784 and 785/2015

that the option of striking off the defence of the respondent should be exercised as a last resort and in cases where the conduct of the defaulting party was found to be willful and contumacious. It further provided that contempt proceedings for willful disobedience could also be initiated before the appropriate Court.

25. The Honourable Supreme Court has sought to strike a balance between the rights, obligations and interests of the parties involved in matrimonial disputes. The Guidelines and other recommendations made by the Supreme Court seek to ensure that the social welfare objective of statutes on maintenance is duly fulfilled and is not diluted by time lags and procedural irregularities.

26. For the reasons stated above, this Court is not inclined to entertain the present civil revision petitions. It is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning. Therefore, the revision petitioner/husband is directed



CRP.3986 / 2018 , 784 and 785/2015

to pay the arrears of maintenance to his wife and child as on date within a period of four weeks from the date of receipt of a copy of this order.

27. The Civil Revision Petitions are dismissed with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

05.12.2022

Index: Yes/No

Speaking/Non-speaking order

sts/nvsri

To

1. The learned Principal Judge, Thiruvallur District.

2) The Section Officer, V.R.Section, High Court, Madras.



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CRP.3986 / 2018 , 784 and 785/2015

J.NISHA BANU, J.,

sts/nvsri

COMMON ORDER in

CRP.Nos.**784 and 785/2015**

and CRP.No.**3986 / 2018**

05.12.2022