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C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

Sridhar

... Petitioner

Vs.

Brinda Meena

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order of attachment passed in F.C.E.P.No.01 of 2021 in F.C.I.A.No.740 of 2017 in F.C.O.P.No.122 of 2016, on the file of the Court of Family Judge at Chengalpattu dated 03.09.2021.

For Petitioner : Ms.R.Thenamirtha Shyamala

For Respondent : No appearance

ORDER

This civil revision petition has been filed to set aside the order of attachment passed in F.C.E.P.No.01 of 2021 in F.C.I.A.No.740 of 2017 in F.C.O.P.No.122 of 2016, on the file of the Court of Family Judge at Chengalpattu dated 03.09.2021.



C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

2. Heard the learned counsel for the petitioner. There is no appearance for the learned counsel for the respondent.

3. The revision petitioner is the petitioner in FCOP No.122 of 2016, and he has filed the original petition for the relief of dissolution of marriage. During the pendency of the said proceedings, the respondent wife filed an interim application in FCIA No.740 of 2017, for awarding interim maintenance. The said petition was allowed and interim maintenance of Rs.4,000/- p.m for the wife, Rs.3,000/- p.m for the minor son and Rs.2,000/- p.m for the minor daughter, totally Rs.9,000/- p.m was fixed along with the cost of Rs.5,000/-. Thereafter, the respondent wife has filed the execution proceedings to recover the arrears of interim maintenance awarded to her. In the said execution proceedings, an order of attachment of the properties of the petitioner is passed. Aggrieved over that, the revision petitioner/husband has filed this civil revision petition.

4. Ms.R.T.Shyamala, learned counsel for the revision petitioner submitted that interim maintenance would only mean the entitlement of maintenance during the time when the matrimonial proceedings were pending



C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

between the parties.

WEB COPY

5. As per the contention of the learned counsel for the revision petitioner, the respondent wife is entitled to recover the interim maintenance only from 11.09.2017 (date of filing of the petition in FCIA No.740 of 2017) to 04.10.2019 (date of dismissal of the FCOP No.122 of 2016). The further contention of the learned counsel for the petitioner is that the son is entitled to get maintenance until he became major and thereafter, no maintenance can be paid to him.

6. The son for whom an interim maintenance of Rs.3,000/- was awarded, is said to have become major on 27.04.2018. On perusal of column No.8 of the execution petition filed by the respondent, it is seen that the interim maintenance at the rate of Rs.9,000/- p.m is calculated from 11.09.2017 to 11.01.2021. The total decree amount towards arrears of maintenance is calculated at Rs.3,60,000/- along with the cost of Rs.5,000/- and totally Rs.3,65,000/-. No doubt the decree passed in FCIA.No.740 of 2017, is an order for interim maintenance and the said interim maintenance is payable till the disposal of the FCOP No.122 of 2016 only. The award of



C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

interim maintenance during matrimonial proceedings will not disentitle the wife from claiming maintenance under any other provisions of law for any other period.

7. But, so far as the interim maintenance given to the parties during the pendency of the matrimonial proceedings are concerned, that can only be for the duration which the litigation was pending. Since the petitioner has calculated the arrears of maintenance beyond 04.10.2019, the learned Executing Judge ought to have restricted the recovery of the decree amount only till such date along with the cost. It is pertinent to mention that the revision petitioner has made a deposit of Rs.1,31,000/- on the file of the Family Court on 28.04.2022, in compliance of the order of this Court dated 04.04.2022, towards arrears of maintenance and cost. Under such circumstances, I feel that the order of attachment ordered by the learned Executing Judge has to be set aside and the matter has to be remitted back to the Executing Court.

8. In the result, this civil revision petition stands allowed. The order of



C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

attachment passed in F.C.E.P.No.01 of 2021 in F.C.I.A.No.740 of 2017 in F.C.O.P.No.122 of 2016, on the file of the Court of Family Judge at Chengalpattu dated 03.09.2021, is set aside. The matter is remitted back to the Executing Court for calculating the decree amount in accordance with the order and to credit the amount already deposited in the Court towards the discharge of the decree amount and record full satisfaction.

9. The revision petitioner is at liberty to produce the proof of the age of his son in order to show that he attained majority and seek appropriate relief from the Executing Court itself. The respondent is at liberty to file appropriate application before the learned Family Court to withdraw the amount deposited. No costs. Consequently, connected miscellaneous petition is closed.

17.06.2022

Index: Yes/No
Speaking / Non Speaking Order
gsk

To
The Family Judge, Chengalpattu.

R.N.MANJULA, J



WEB COPY



C.R.P (NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

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C.R.P.(NPD).No.978 of 2022 and
C.M.P.No.5076 of 2022

17.06.2022