



C.R.P(PD)No.1748 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2022

Coram

The Honourable Mrs.Justice R.HEMALATHA

**C.R.P(PD) No.1748 of 2020
and C.M.P.No.10816 of 2020**

Parthasarathy

...Petitioner

Versus

Sumathi

...Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 29.06.2020 in I.A.No.155 of 2017 in H.M.O.P.No.83 of 2017 on the file of Sub Court, Tirupathur, Vellore District by allowing this civil revision petition.

For Petitioner : Mr.P.A.Sudesh Kumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the learned Sub Judge, Tirupathur, Vellore District in I.A.No.155 of 2017 in H.M.O.P.No.83 of 2017 dated 29.06.2020.



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2. The revision petitioner is the respondent in I.A.No.155 of 2017 in

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H.M.O.P.No.83 of 2017 on the file of the Sub Court, Tirupathur. The respondent herein (petitioner in H.M.O.P) filed an Interlocutory Application in I.A.No.155 of 2017 under Section 24 of the Hindu Marriage Act 1955, seeking for interim maintenance of Rs.10,000/- for her and her minor son. The revision petitioner filed a counter affidavit in the said application. After full contest, the learned Sub Judge, Tirupathur vide orders dated 29.06.2020 directed the revision petitioner to pay a sum of Rs.7,000/- towards interim maintenance to the respondent and her son and also, a sum of Rs.5,000/- towards costs. Aggrieved over the same, the present Civil Revision Petition has been filed.

3. Though the respondent was served with notice, she did not appear and hence, her name is printed in the cause list. Today also, there is no representation for the respondent.

4. Heard Mr.P.A.Sudesh Kumar, learned counsel for the revision petitioner.



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5. The contention of the learned counsel for the revision petitioner is that the revision petitioner has filed H.M.O.P.No.83 of 2017, seeking for dissolution of marriage on the ground that his wife/respondent is leading an adulterous life. He further contended that when a husband files H.M.O.P on the ground of adultery, the trial Court ought to have taken up the said H.M.O.P at the first instance and on the other hand, the trial Court had granted interim maintenance to the petitioner. If the husband proves the adulterous life led by his wife/respondent, she would not be entitled to claim maintenance. In support of his contentions, he relied on the decision in ***Perumal vs. Saraswathi*** reported in **(2021) 3 MLJ 82**, wherein, this Court has held as follows:

“5. We are unable to agree with the above said submissions of the learned counsel for the respondent/wife. The appellant/husband has filed F.C.O.P.No.409 of 2016 under [Sections 13\(1\)\(i\) and 13\(1\)\(ia\)](#) of the Hindu Marriage Act, 1955, seeking dissolution of marriage that took place on 10.03.1997 on the ground of adultery and cruelty by taking a stand that his wife has committed an offence of adultery, therefore, the marriage is to be dissolved under [Sections 13\(1\)\(i\) and 13\(1\)\(ia\)](#) of the Hindu Marriage Act,



1955. Adultery means a voluntary sexual intercourse between a married person and someone other than that person's current spouse or partner. When the appellant/husband has raised serious objections of adulterous affairs of his wife and sought for divorce on the said ground, we are of the considered view, learned Family Court ought to have taken up both matters together, namely, divorce petition and maintenance application, the reason being, if for any reason, if the appellant/husband is able to substantiate during the trial that the divorce petition filed under [Section 13\(1\)\(i\)](#) and [13\(1\)\(ia\)](#) of the Hindu Marriage Act, 1955, is maintainable, then the question of payment towards interim maintenance would become redundant.

6. Further, by virtue of Section 21 of the Civil Procedure Code, when an objection with regard to the jurisdiction of the trial Court is raised by any one of the parties, such objection raised shall be dealt with at the earliest possible opportunity. The same analogy may also apply in this case as well, for the reason being that when the husband has filed a C.M.A.No.3126 of 2019 divorce petition under [Section 13\(1\)\(i\)](#) of the Act, alleging that his wife is leading an adulterous life with one Ramesh/second respondent in divorce petition, that has caused cruelty under [Section 13\(1\)\(ia\)](#) of the Act, in all fairness, learned Family Court ought to have decided the allegation of adultery raised in the divorce petition as well as maintenance application together. It is trite law that during the subsistence of the first marriage, the wife cannot live in adulterous life with another person. In the event of substantiating the allegation



of adulterous life, the wife will be losing her right to claim maintenance. On the other hand, if maintenance is paid for one or two years and finally, if the husband is able to substantiate his allegation that his wife is leading adulterous life, then the payment of maintenance to an undeserving party would become meaningless. Therefore, finding fault with the reasons and conclusions reached by the learned Family Court in not deciding the serious allegations made in the divorce petition first and then deciding Interlocutory Application seeking maintenance second, the impugned fair and decreetal order passed by the learned Family Court is set aside. Consequently, the matter is remitted back to the learned Family Court to decide both the cases, namely, divorce petition and Interlocutory Application, together in the manner known to law within a period of three months from the date of receipt of a copy of this judgment.”

6. The facts of the above decision is similar to the facts of the present case. The trial Court without going into the merits of the case in H.M.O.P.No.83 of 2017, allowed the Interlocutory Application in I.A.No.155 of 2017, seeking interim maintenance from the revision petitioner. While awarding the interim maintenance to the respondent/wife of the revision petitioner, the trial Court has not taken into consideration the allegations made by the revision petitioner in H.M.O.P.No.83 of 2017.



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7. In such circumstance, the orders passed by the trial Court in I.A.No.155 of 2017 is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed and the order passed by the learned Subordinate Judge, Tirupathur, Vellore District in I.A.No.155 of 2017 in H.M.O.P.No.83 of 2017 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

To

The Sub Court,
Tirupathur,
Vellore District.



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R.HEMALATHA, J.

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