



CRP. No.3483 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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P.Vijayalakshmi

...Petitioner/Petitioner/petitioner

Vs.

1.K.Chellamuthu

....Respondent/Respondent/Respondent

PRAYER: This Civil Revision Petition is filed under Section 115 of CPC prayed to set aside the fair and decreetal order dated 16.08.2019 passed in I.A No.85 of 2017 in H.M.O.P No.42 of 2017 on the file of Subordinate Judge, Kangayam and award Rs.20,000/- per month towards interim maintenance and Rs.5,000/- towards litigation expenses, pending disposal of H.M.O.P No.42 of 2017.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : Mr.P.Navaneetha Krishnan



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ORDER

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This Civil Revision petition has been filed to set aside the fair and decreetal order dated 16.08.2019 passed in I.A No.85 of 2017 in H.M.O.P No.42 of 2017 on the file of Subordinate Judge, Kangayam and award Rs.20,000/- per month towards interim maintenance and Rs.5,000/- towards litigation expenses, pending disposal of H.M.O.P No.42 of 2017.

2. The Revision petitioner and the respondent are husband and wife. The Revision petitioner filed H.M.O.P No. 42 of 2017 before the Subordinate Court, Kangayan against the husband for divorce. Thereafter, she filed I.A No.85 of 2017 for interim maintenance and the defendant also contested the case filing counter statement. On hearing both sides argument the learned Trial Judge passed an order dated 16.08.2019 that the respondent has to pay interim maintenance of Rs.5,000/- to the petitioner, every month commencing from September 2019 and to be paid within the first 5 days of every English calendar month. In fact, the learned Trial Judge has ought to have allowed the application to pay the said interim maintenance from the date of filing of the application but erroneously stated that from the date of September 2019 onwards.



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3. Challenging the same the wife preferred this Civil Revision Petition.

4. Heard both sides.

5. The learned counsel for the petitioner submitted that by relying the Judgement of the Supreme Court in the case of Mohamed Nisha Banu Vs Mohamed Rafi and others reported in 2021 SCC online Mad 801:

9. It has therefore necessary to issue directions to bring about the unity and consistency in the orders passed by all Courts, by directing that maintenance be awarded from the date on which the application was made before the concerned Court. The right to claim maintenance must date back to the date of filing of the application, since the period during which maintenance proceedings remained pending is not within the control of the applicant. Considering the above, the Hon'ble Apex Court has categorically directed that all the courts to award maintenance from the date of application.

he Contending that from the date of filing of application the petitioner is entitled to get maintenance.

6. Per contra, the learned counsel for the respondent submitted that already H.M.O.P disposed on 21.02.2016 accordingly divorce granted in favour of the petitioner so she is not entitled to interim maintenance as claimed by the revision petitioner for the reason that H.M.O.P has already ordered during the pendency of the Maintenance case.



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7. On perusal of records, it reveals that the Trial Court ordered the respondent to pay maintenance to the petitioner herein from the order date i.e., 16.08.2019 but the contention of the petitioner is that she entitled to get maintenance from the date of filing of the application itself. Further, he relied the Judgement of the Supreme Court in the case of Mohamed Nisha Banu Vs Mohamed Rafi and others reported in 2021 SCC online Mad 801, which is squarely applicable to the facts of the present case. Therefore, this Court is of the view that the husband/respondent bound to pay interim maintenance from the date of filing of application for maintenance case itself. But the Trial Court erroneously passed an order to pay maintenance from the order date i.e., 16.08.2019 . In fact, the application filed on 13.02.2017 so husband has to pay maintenance from the date of application not from the order date. Accordingly the order passed by the Trial Court in I.A No. 85 of 2017 in H.M.O.P No.42 of 2017 is hereby set aside and the wife is entitled to get interim maintenance from date of filing of I.A No.85 of 2017 in H.M.O.P No.42 of 2017 i.e., first week of February 2017 onwards.



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8. In the result, the Civil Revision Petition is disposed of. There shall be no order as to costs.

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To

1. The Subordinate Judge, Kangayam.



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T.V.THAMILSELVI,J.

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