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Crl.RC.No.1505 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1505 of 2022

Mukesh Jain

... Petitioner

Vs.

Koushalya

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the order dated 19.10.2022 passed in M.P.No.632 of 2022 in M.C.No.413 of 2007 by the principal Judge, Family Court, Chennai.

For Petitioner : M/s.S.P.Arthi

ORDER

This Criminal Revision Case has been filed seeking to set aside the order dated 19.10.2022 passed in M.P.No.632 of 2022 in M.C.No.413 of 2007 by the principal Judge, Family Court, Chennai.



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2. The petitioner is husband and the respondent is his wife. For the sake of convenience, the parties are referred to as per their relationship as husband and wife.

3. The case of the husband is that the wife had filed a maintenance case before the I Additional Family Court, Chennai, in M.C.No.413 of 2007 for maintenance and the same was ordered on 29.04.2017 ordering a sum of Rs.20,000/- as monthly maintenance to the wife. Challenging the same, both the husband and wife had preferred revision before this Court in CrI.RC.Nos.783 and 1139 of 2017 in which, the wife had sought for enhancement of maintenance and the husband had sought to set aside the maintenance order passed by the Family Court and this Court by order dated 20.11.2018, remanded the matters to the Family Court and directed the Family Court to take the maintenance case afresh by giving opportunity to both the parties to adduce further evidence if any, within four weeks and to pass appropriate orders within four weeks therefrom, after analysing the evidence already on record as well as the fresh evidence adduced if any. Against which, the wife preferred SLP before the Hon'ble Supreme Court in CrI.A.Nos.1129-1130 of 2019. The Hon'ble Supreme Court by order dated



24.07.2019, confirmed the order of remand passed by this Court withholding that the order of maintenance passed by the Family Court shall operate as ad-interim maintenance and the husband shall continue to pay during pendency of the proceedings and in the event of failure on the part of the husband to pay the said amount, the wife was granted liberty to strike off the defence of the husband. Further, it was directed that the Family Court shall dispose of the proceedings of remand within six months from the date of receipt of copy of the said order. The husband had duly complied with the order of the Hon'ble Supreme Court. However, the wife had filed a petition for striking off his defense in M.P.No.4 of 2019 alleging wilful default in payment of monthly maintenance and the same was dismissed by the Family Court. The said order was challenged by the wife in Miscellaneous Application Nos.1296-1297 of 2019. By order dated 06.08.2020, the Hon'ble Supreme Court clarified its order dated 24.07.2019 and granted further period of two months to the Family Court for the disposal of the proceedings. Even within the stipulated time, the Family Court did not dispose of case. Therefore, the husband filed the petition in M.P.No.632 of 2022 under Section 151 C.P.C. read with Section 10 of Family Courts Act, before the Principal Family Court, Chennai, seeking to close the proceedings



immediately and to pass final orders in M.C. No.413 of 2007 and the same was dismissed by order dated 19.10.2022. Challenging the same, the present revision has been filed by the husband before this Court.

4. The learned counsel for the husband would submit that though the Hon'ble Supreme Court had given direction to the Family Court to dispose of the case within six months and subsequently, granted further period of two months time, the Family Court had not disposed the case and that the wife has been protracting the case. Therefore, the husband filed the petition in M.P.No.632 of 2022 before the Family Court under Section 151 C.P.C. read with Section 10 of Family Courts Act, seeking to immediately close the proceedings and to pass final orders in main case in M.C.No.413 of 2007 in line with the directions of the Hon'ble Supreme Court vide its order dated 06.08.2020 passed in Criminal Appeal Nos.1129-1130 of 2019. But the learned Judge, Family Court, without considering the directions of the Hon'ble Supreme Court, dismissed the petition by order dated 19.10.2022. Hence, the present revision has been filed before this Court.



5. Heard the learned counsel for the petitioner. Though the matter came up for admission, since the revision has been filed by the husband seeking to close the proceedings immediately and to pass orders in the maintenance case, this Court is inclined to dispose of the revision at the admission stage itself by going through the materials on record.

6. It is seen that this Court has already remanded the matter to the Family Court and challenging the same, the wife approached the Hon'ble Supreme Court and the Hon'ble Supreme Court confirmed the order of remand passed by this Court withholding that the order of maintenance passed by the Family Court shall operate as ad-interim maintenance and directed the Family Court to dispose of the case within a stipulated time. If the Family Court has not complied with the same, the husband should have approached the Hon'ble Supreme Court for non compliance, whereas he has filed the petition under Section 151 C.P.C. Read with Section 10 of the Family Courts Act, before the Family Court to close the evidence and to pass final orders.



7. It is settled proposition of law that the proceedings under Section 125 Cr.P.C. is summary in nature. The Hon'ble Supreme Court, in the case of ***Rajnish Vs. Neha and Another reported in (2021) 2 SCC 324*** has held that in the maintenance case both the parties have to file affidavit of disclosure of Assets and Liabilities before the Family Court and such affidavit should be filed within a maximum period of four weeks and the Courts may not grant more than two weeks opportunities for submission of such affidavit. But in this case, the Family Court has not stated whether the parties filed the Assets and Liabilities statement. The learned Judge, Family Court while dismissing the petition in M.P.No.632 of 2022 dated 19.10.2022 has observed as follows;

“As per the directions of the Hon'ble Apex Court, this Court given opportunity to the respondent/petitioner for adducing further evidence on her side. She filed a petition for summoning the witnesses to establish income of the petitioner. In further evidence one witness was examined and documents were marked and other summoned witness are pending in the stage of service. In one petition, the documents were sent by the Additional Commissioner, State Tax, Jodhpur, directly to the Court. Further the summons were pending that the witness are in the Jodhpur on



correspondence, the delay for examining the witness would be occurred. In the stage of further evidence on the side of the respondent this Court cannot close the proceedings.

8. Though the Hon'ble Supreme Court by order dated 06.08.2022, had directed the parties to co-operate with the Principal Judge of the Family Court in the expeditious disposal of the proceedings within a period of two months, still the case is pending. Therefore, the husband has to file Assets and Liability statement declaring his income. In case if the husband feels that the Family Court is not disposing of the case within the stipulated time without any valid reason, he should have approached the Hon'ble Supreme Court for non compliance of the order of the Hon'ble Supreme Court. But once again he has filed the petition before the Family Court seeking to close the evidence and immediate disposal of the maintenance case for which, the Family Court has also given reason for pending as stated above. This Court cannot interfere with the order of the Hon'ble Supreme Court that without giving opportunity to the parties the case has to be disposed of.

9. As already stated, if the husband feels that the wife is purposefully evading the case, then he should have approached the Hon'ble Supreme



Court for non compliance of the order of the Hon'ble Supreme Court and for direction to the Family Court to close the evidence and to proceed further.

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10. Further, from the order of the Family Court, it is to be noted that the wife has been struggling to prove the income of the husband and if the husband files the affidavit of Assets and Liabilities, it would be easy for the Family Court to dispose of the case within time.

11. Since the Hon'ble Supreme Court has already given a direction to dispose of the case within a stipulated time, the Family Court is directed to expedite the proceedings and dispose of the maintenance case in M.C.No.413 of 2007 within a reasonable time and file a report before the Hon'ble Supreme Court.

12. With the above directions, this Criminal Revision case is dismissed at the admission stage itself.

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To

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1. The Principal Family Court, Chennai
2. I Additional Family Court, Chennai



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P.VELMURUGAN,J.

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