



C.R.P.(PD)No.4812 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4812 of 2013
and M.P.No.1 of 2013

Jude Antony Gomez

.. Petitioner

VS

Nimmy Joy

.. Respondent

Petition filed under Article 227 of the Constitution of India against the order and decree dated 25.09.2013 passed in I.A.No.53 of 2012 in I.D.O.P.No.10 of 2011 on the file of Principal District Judge, Chengalpattu.

For Petitioner : Ms.A.V.Bharathi
for Mr.S.Yuvaraj

For Respondent : No Appearance

ORDER

The petitioner married the respondent on 31.08.2008. The petitioner and the respondent started living at Pallavaram in Chennai. During the relevant time, the petitioner was working as a Mechanic at Juma Al Majid – EST, Electro Mechanical Company at Abudhabi.



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2. According to the petitioner, his wife was behaving like psychiatric patient. The petitioner found that it is not possible to live with her and therefore, he presented IDOP.No.10 of 2011. Even in the IDOP, it was admitted that at the time of wedding, he was working abroad in Abudhabi and on this ground too the petitioner is not willing to live with the wife, the petition was presented under Section 10 of the Indian Divorce Act.

3. A detailed counter was filed to the said IDOP. Thereafter, the wife filed an application for grant of interim maintenance in I.A.No.53 of 2012. She made a claim that she is entitled to Rs.50,000/- per month on the basis that the petitioner is working abroad and also he is getting rental income from his property in Pallavaram of Rs.50,000/- per month.

4. The petitioner filed a detailed written statement to the same stating that despite the fact that efforts were made for re-union it was the wife, who refused to do so. He further alleged that attempts were before the Marriage Tribunal of The Diocese of Chingleput for bringing the husband and wife together, but the wife was unwilling. He denied the fact that he is having a monthly income of Rs.2,50,000/- and also the fact that he did not have any rental income from the property in Pallavaram.

No witnesses were examined on either side.



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5.The learned trial Judge took up I.A.No.53 of 2012 and allowed the same fixing the monthly maintenance at Rs.7,500/- per month.

Aggrieved by the said fixation, the husband is on the revision before me.

6.Ms.A.V.Bharathi,learned counsel for Mr.S.Yuvaraj, appearing for the petitioner would vehemently contend that when the wife has not produced any document for fixation of the monthly maintenance at Rs.7,500/- and the same is excessive, onerous and ought to be interfered with by the Court. She would submit that the amount should be reduced appropriately.

7.The respondent, though served, has not entered appearance before me. I have carefully perused the records.

8.The interim maintenance is granted in order to sustain the wife pending disposal of the Divorce Proceedings. It is a settled position of law that the wife should be maintained on the same level as she enjoyed while living in a matrimonial home. The allegation in the main divorce petition shows that the husband was working in Abudhabi. He has not produced any records before the Court to show that he has left the employment at Abudhabi and currently he is drawing lesser salary.

9.An opportunity is always granted to the husband to prove what is his monthly income, but, unfortunately he has not demonstrated what is



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his monthly income. On the point that the wife has not produced the monthly salary certificate of the husband, is expecting the wife to perform an impossibility.

10.As per Section 106 of the Indian Evidence Act, “burden of proving fact especially within knowledge”, is on the husband. He had to state the monthly income. How much he draws is only known to him and not to the wife. This is moreso when they are separated. Therefore, the Court has taken a rough calculation and fixed it at Rs.7,500/- per month. As against the total claim of Rs.50,000/-. Rs.7,500/- per month works out only about Rs.225/- per day, which is hardly sufficient for a person to sustain herself especially an MBA graduate on a day-to-day basis.

11.The petitioner husband has also not alleged that the wife is gainfully employed elsewhere. In the light of the aforesaid circumstances, I am left with no other option than to confirm the order passed by the learned Principal District Judge, Chengalpattu in I.A.No.53 of 2012 in IDOP.No.10 of 2011 dated 25.09.2013.

12.At this stage, Ms.Bharathi would submit that the arrears would be heavy amount, if it is to be paid in one lot and therefore requested for payment of the same in installments. The submission is reasonable.

Therefore, the husband is granted four (4) installments commencing from



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30.09.2023 to clear the arrears of maintenance from the date of filing of the petition till completing 31.12.2023. By 31.12.2023, the husband should have cleared all the arrears from 2012 till date. The husband shall continue to pay a sum of Rs.7,500/- per month pending disposal of the IDOP.

13.The learned Principal District Munsif, Chengalpattu is requested to take up IDOP.No.10 of 2011, after the clearing of arrears, and dispose of the same within a period of four (4) months thereafter. In any event, the proceedings should be completed on or before 30.04.2024.

14.With the above directions, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.08.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The Principal District Judge,
Chengalpattu.



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V. LAKSHMINARAYANAN,J.

VS

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