



Review Application No.85 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

Review Application No.85 of 2023

R.Selvakumari

... Petitioner

Vs.

R.Rajkumar

... Respondent

Prayer: Review Application is filed under Order 47 Rule 1 read with 114 of of Civil Procedure Code, praying to review of the order made in C.M.A.No.1240 of 2021 on the file of this Court.

For Petitioner : Mrs.R.Selvakumari
(Party-in-Person)

For Respondent : No Appearance

ORDER



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(Order of the Court was made by S.SOUNTHAR.J.,)

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This Review Application has been filed seeking to review the order passed by this Court in C.M.A.No.1240 of 2021 whereunder interim maintenance ordered by the V Additional Family Court, Chennai has been reduced from Rs.25,000/- per month to Rs.15,000/- per month.

2. The applicant in this review application is the wife of the respondent. They got married on 20.09.2010 and they have a female child aged about 10 years. Admittedly, they are living apart and respondent filed a petition for dissolution of marriage in O.P.No.1855 of 2019 on the file of the V Additional Family Court, Chennai and the same is pending. The applicant herein filed a petition seeking interim maintenance in I.A.No.1 of 2020 before the V Additional Family Court, Chennai. The Family Court was pleased to fix the interim maintenance at Rs.25,000/- per month. The respondent was also directed to pay Rs.20,000/- to the applicant towards litigation expenses. Aggrieved by the same, the respondent filed an appeal in C.M.A.No.1240 of 2021 before this Court.



3. At the time of disposal of the said civil miscellaneous appeal, this Court by taking into consideration that applicant herein and her minor child are living in a Flat owned by respondent, reduced the quantum of interim maintenance fixed by the Family Court from Rs.25,000/- per month to Rs.15,000/- per month.

4. As per the salary certificate produced by the respondent, he is drawing Rs.71,735/- per month and he is working in Tech Mahindra. The quantum of interim maintenance fixed by the Family Court was reduced only on the ground that the applicant and her child are residing in a flat purchased by respondent/husband.

5. Now, the present review application has been filed by the applicant/wife on the ground that subsequent to the disposal of the appeal, the respondent stopped payment of EMI to Bank from which he availed loan to purchase the flat. Therefore, the Bank Officials proceeded against the property and sealed the same on 16.02.2023.



6. It is stated by the applicant that now she is not having any house to stay and virtually she and her minor child are in street.

7. Though notice in the review application is served on the respondent and his name appeared in the cause list, there is no representation for the respondent. Even during last occasion on 06.07.2023 there was no representation for the respondent and in order to give an opportunity to the respondent, the Registry was directed to list the matter today. Even today, there is no representation for the respondent.

8. In the order passed in main appeal, this Court by taking into consideration the applicant and her child were staying in a house purchased by the respondent, reduced the quantum of interim maintenance from Rs.25,000/- per month to Rs.15,000/- per month.

9. Now, it is specifically stated by the applicant in review application, the respondent stopped the payment of EMI to Bank and therefore, the property was sealed by the Bank Officials on 16.02.2023. Taking into



consideration, the review application is arising out of proceedings for interim maintenance pending petition for divorce filed by the respondent, this Court is inclined to review the order passed in civil miscellaneous appeal without relegating the party to file a fresh application before the Family Court by pleading change of circumstances. Directing the applicant to file fresh application seeking enhancement of quantum of interim maintenance based on the subsequent change of circumstances may not be proper in the facts and circumstances of the case, especially when earlier order reducing the quantum of interim maintenance was passed mainly on the ground that applicant is staying in a flat owned by respondent.

10. In view of the peculiar circumstances of the case and material change of circumstances, the quantum of interim maintenance fixed by this Court in civil miscellaneous appeal needs to be revisited.

11. It is settled law maintenance includes a provision for residence when order in main civil miscellaneous appeal was passed, the applicant and her minor child were staying in flat owned by the respondent. Now, the



applicant raised a specific ground in review application subsequent to the order passed by this Court, the respondent failed to pay EMI to Bank and consequently, the flat was sealed by Bank Officials. The applicant made a specific plea that due to default committed by the respondent in paying EMI, the flat was sealed by the Bank Officials on 16.02.2023 at 12.00 noon. For the reason best known to him, the respondent has not appeared before this Court and controverted the said averment. Therefore, the applicant and her minor child have no shelter to stay. In these circumstances, we are of the opinion that the interim maintenance fixed by this Court in earlier order needs to be enhanced to Rs.25,000/- per month.

12. In view of discussion made above, this Court is inclined to review the order and enhance the interim maintenance from Rs.15,000/- to Rs.25,000/- per month. The said enhanced amount shall be paid by the respondent from February – 2023 (i.e. the month during which, according to the applicant, the flat was sealed by bank officials).

13. Accordingly, the review application is allowed, the respondent is



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directed to pay monthly maintenance to the applicant at the rate of Rs.25,000/- per month from February – 2023. The respondent is granted eight weeks time from today to pay arrears of enhanced maintenance. The enhanced maintenance from August 2023 onwards, shall be paid on or before 5th of every succeeding month.

(R.M.D.J) (S.S.J)
27.07.2023

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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and
S.SOUNTHAR, J.

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