



C.R.PD.No.1237 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.04.2023
Delivered on	28.06.2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

C.R.P. PD.No.1237 of 2023
and C.M.P.No.8400 of 2023

T.D.Thiagarajan

... Petitioner

Vs.

G. Saraswathi

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair order dated 03.02.2023 made in I.A.No.1 of 2022 in H.M.O.P.No.93 of 2022 passed by the Subordinate Judge, Thiruvottiur.

For Petitioner

...

Mrs.P.R.Uma Maheswari

For respondent

...

Mr.N.Srinvasulu

ORDER

This revision is filed by the petitioner against the order passed in



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I.A.No.1 of 2022 in H.M.O.P.No.93 of 2022 dated 03.02.2023 by the learned subordinate Judge, Thiruvottiyur, Chennai.

2.The facts in brief as can be gathered from the records would go to show that the petitioner / husband filed H.M.O.P.No.93 of 2022 against the respondent / wife seeking divorce on the ground of cruelty. The respondent / wife having appeared before the Court has moved an application in I.A.No.1 of 2022 seeking for a direction to the petitioner herein to pay a sum of Rs.50,000/- per month as interim maintenance on or before 5th of every English Calender month till the disposal of the main petition. On hearing both sides, the said petition was allowed in part, directing the petitioner / husband to pay a sum of Rs.25,000/- per month. Aggrieved by the said order, the petitioner has approached this Court.

3.Heard Both sides. Perused the records including the order passed by the learned subordinate Judge in the main petition.

4.There is no dispute that the petitioner is the husband and the respondent is the wife whose marriage was solemonized at Chennai on



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31.05.2012 as per Hindu Rites and Customs Act. Subsequent to their marriage, dispute arose between the parties and the respondent started to reside with her parents along with her daughter at her parental home, Tiruttani. Whereas the petitioner has to reside along with his parents at Thiruvottriyur, Chennai. Both of them are living separately for more than five years at the time of filing of the divorce petition. It is relevant to extract Section 24 of the Hindu Marriage Act, 1955 hereunder;

Section 24: *Maintenance pendente lite and expenses of proceedings, -*

“Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable”.



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5. On a perusal of the above provision, it is clear that either of the spouses can approach the court and file a petition under Section 24 of the Hindu Marriage Act, 1955, seeking maintenance as *pendentelite* and also seek for expenses for the proceedings on which the court is expected to dispose of the same. Having regard to income of the petitioner and the income of the respondent and also to consider the legal expenses to be paid by the spouse who approached the court, seeking maintenance.

6. According to the respondent, she has not been working anywhere and she has no source of income. She has been residing at Tiruttani with her parents and that her parents are aged, ailing and that she does not want to depend any more on her parents as they have already spent a huge sum of Rs.5,00,000/- for her marriage. It is also submitted that the respondent's father is the only breadwinner in the entire family and his financial condition is not sound. In respect of the income of the petitioner is concerned, the respondent has assaulted that the petitioner is a graduate having wealth and belonging to a wealthy family, having own house at Thiruvottiyur and that he draws a salary of Rs.85,000/- per month as an executive in Ashok Leyland, Ennore.



7. In contrary to the submissions of the respondent in respect of petitioner's income and the income of the respondent, the petitioner has submitted through his counsel that the respondent is very much qualified as she holds Master degree in commerce and Master degree in Tamil and also she has done her P.G.D.C.A.. It is also submitted that she was working in I.C.I.C.I. Bank and she is very rich and capable of lending money to others, thereby she was not interested in working and thereby she has quit the job.

8. The petitioner has further stated that he is not the father of the baby T.S.Thanuska and thereby the baby is not entitled for maintenance. It is also stated that since the respondent herself has deserted the petitioner, she is also not entitled for interim maintenance. So far as the income of the petitioner is concerned, it is submitted that the petitioner is a diploma holder and working as an operator in a private sector company and on account of economic slow down and adverse market condition, retrenchments are common in his company and on account of the harassment by the respondent, he has changed his position from the role of a Manager to that of a operator. Thereby, his salary was also reduced.



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9.He has further stated that he is the only son to his parents and his father has taken voluntary retirement and all the money that is received on his retirement was spent for construction of a house. It is also submitted that his sister though she was married was suffering schizophrenia and therefore she is also residing in their house along with his parents and thereby it is submitted by the petitioner that whatever income he gets, he has to spend for his family including his sister and fairly there will be no amount left which could be given to the respondent as maintenance.

10.The trial court has recorded in its order that on a direction given by the trial court, the petitioner herein has produced his salary certificate which would go to show that he gets an amount of Rs.85,669/- however, after all the deductions his take home salary is Rs.21,311/-. The petitioner has taken a specific plea that the respondent / wife cannot seek for maintenance for her daughter as according to the petitioner he is not the father of the daughter of the respondent / wife. However, the record discloses that the trial court has sent the petitioner and respondent and the daughter of the petitioner and DNA test was done and as per the report, the petitioner is the biological father of the daughter of the



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respondent, thereby the petitioner cannot contend that she is not his daughter. However, Section 24 of the Hindu Marriage Act, it is provided seeking for interim maintenance to any of the spouses during the pendency of the matrimonial dispute. The provision did not include for making a provision for maintenance of the children. This Section 24 of the Hindu Marriage Act is created keeping in view of the fact that the expenses are required in order to fight the litigation initiated by one of the spouses. Therefore, though the trial Court has considered the maintenance of the child also, this Court is not in an agreement with the finding of the trial Court and as under Section 24 of the Hindu Marriage Act, the child is not entitled for the maintenance for other spouses.

11. Therefore, the order passed by the trial court directing the petitioner to pay a sum of Rs.25,000/- per month has to be considered in the light of not entitlement of any maintenance by the child. So far as the entitlement of interim maintenance by the respondent / wife is concerned, it is the case of the petitioner that since the respondent herself has deserted the petitioner, the respondent cannot be awarded any maintenance. As already observed, the respondent has no source of income, whereas the petitioner has got monthly income of more than



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Rs.85,000/-. The petitioner though mentioned that he has to maintain his parents and his sister, this court is of the opinion that apart from his obligation emotionally and financially to his family and to his sister, the petitioner is also equally required to maintain his wife and support her in support of legal expenses to be incurred. On a perusal of the Section 24 of the Hindu Marriage Act, there is no rider fixed for awarding of maintenance to one of the spouses except the fact that the court is required to see the income of both the spouses. Therefore, the contention that since the respondent has deserted the petitioner, the respondent cannot be granted any interim maintenance is not convinced.

12.In view of the above, keeping in view of the income of the petitioner and his expenditure towards maintenance of his parents, sister and also consign the obligation of the petitioner to maintain his wife and also support her for her legal expenses and also considering the fact that the daughter of the parties to this petition, is not entitled for maintenance under Section 24 of the Hindu Marriage Act, this Court is of the opinion that to meet the ends of justice, instead of awarding Rs.25,000/- per month towards interim maintenance, as directed by the trial court, the petitioner is directed to pay a sum of Rs.20,000/- (Rupees Twenty



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Thousand only) per month to the respondent towards interim maintenance.

13.In the result, this petition is allowed in part. The orders passed in I.A.No.1 of 2022 in H.M.O.P.No.93 of 2022 dated 03.02.2023 is hereby modified to the effect that the interim maintenance of Rs.25,000/- awarded by the learned Subordinate Judge, Thiruvottiyur is modified to Rs.20,000/- per month. The rest of the conditions imposed by the trial Court in I.A.No.1 of 2022 in H.M.O.P.No.93 of 2022 dated 03.02.2023 shall stand unaltered. The trial Court is directed to dispose of the main petition as expeditiously as possible. No costs. Consequently, the connected C.M.P.No.8400 of 2023 is closed.

28.06.2023

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Index: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN, J.

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To

The Subordinate Judge
Thiruvottiyur.

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