



C.R.P.No.2468 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.2468 of 2022

and

C.M.P.No.12751 of 2022

1.Pavithra
2.Minor. Sanjai
3.Minor. Dhivishwarn

... Petitioners

Vs.

Saravanan

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 08.07.2022 made in FCIA No.9 of 2022, in FCOP No.103 of 2019, on the file of the learned Family Court at Chengalpattu.

For Petitioners : Mr.D.R.Arun Kumar

For Respondent : Mr.R.Sreedhar



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ORDER

The civil revision petition is filed against the fair and final order dated 08.07.2022 passed in F.C.I.A. No.9 of 2022 in F.C.O.P. No.103 of 2019. The revision petitioner is the respondent in F.C.O.P. and the respondent filed F.C.O.P. for dissolution of marriage.

2. During the pendency of the divorce case, the revision petitioners filed a petition for maintenance which was allowed by the Family Court. Since the revision petitioner/husband failed to pay the maintenance amount punctually, the petitioners were not in a position to contest the divorce petition effectively and thus, filed F.C.I.A. No. 9 of 2022 to stay the divorce proceedings, till such time, the maintenance amount is settled to the petitioners.

3. The learned counsel for the revision petitioner states that she is unemployed and she has to take care of two minor children thus, she is not in a position to spend and contest the divorce petition filed by the



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respondent/husband. The Trial Court dismissed the Interlocutory Application on the ground that the maintenance petition is no way connected with the divorce petition and therefore, the Interlocutory Application to stay the proceedings is not maintainable. Thus, the petitioner is constrained to move the present revision petition.

4. A practical and pragmatic approach is required in such circumstances. Court cannot decide such petitions based on hypertechnical grounds. In the present case, the respondent/husband filed a petition for divorce. The petitioner/wife is unemployed and has to maintain two minor children with the help of her parents. The Court already passed an order granting maintenance. The respondent is insisting the Court to dispose of the divorce petition and is committing default in payment of maintenance. Such circumstances ought to be considered by the Courts in a practical manner so as to ensure and allow the petitioner/wife to contest the matter effectively.



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5. An unemployed wife may not be in a position to spend and contest the divorce petition filed by the respondent who is gainfully employed and is in an advantageous position. Thus, the nonpayment of maintenance has got certain implications in respect of conducting the matrimonial proceedings before the Court of law. The petitioner has to take care of two minor children also. Thus, the non-payment of maintenance is a ground to stay the divorce petition filed by the husband before the Family Court. The Court cannot compel the wife to complete the divorce proceedings when the husband is not paying the maintenance amount punctually as per the orders of the Court.

6. Maintenance is a livelihood and no person can be deprived of it. Once the maintenance is ordered by the Court, then the Court must ensure that the said amount has been paid punctually by the husband. In the event of default in payment of maintenance amount, the same must be ground to stay the divorce proceedings, till such time the maintenance amount is paid to the wife for the purpose of contesting the matter effectively. The wife



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cannot to be allowed starve and contest the divorce proceedings before the Family Court.

7. It is irrelevant whether the maintenance petition is filed under the Family Court Act, DVC Act or under Section 125 CrPC. It is immaterial whether the petition is filed under each Act. However, the maintenance being a livelihood, once it is ordered, the payment cannot be denied and the Court must ensure that such maintenance is being paid punctually by the husband to the wife as per the orders. Though the proceedings are not interconnected, the implications are very much connected.

8. In the present case, the respondent had committed default in payment of maintenance. However, the learned counsel for the respondent states that a sum or Rs.40,000/- alone is to be settled towards maintenance and the respondent is ready and willing to settle the said amount without causing any further delay.



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9. Thus, this Court is of the considered opinion that the Trial Court has committed an error in not considering the Interlocutory Application filed by the revision petitioners. Whenever the husband commits default in payment of maintenance, he cannot take advantage in respect of the divorce proceedings instituted against the wife and the husband cannot pressurise the Court for the disposal of the divorce proceedings by committing default in payment of maintenance. These being the principles to be adopted, the Trial Court ought to have considered staying the divorce proceedings, till such time, the maintenance is settled in favour of the wife.

10. In view of the facts and circumstances, the order dated 08.07.2022 passed in F.C.I.A. No.9 of 2022, in F.C.O.P. No.103 of 2019, is set aside and the respondent is directed to settle the arrears of maintenance amount within a period of two weeks from the date of receipt of a copy of this order and thereafter pay the monthly maintenance on or before 10th day of every calendar month, without committing any default. In the event of any default, the Trial Court shall keep the divorce proceedings in abeyance till



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such time the maintenance amount is settled.

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11. With these directions, the Civil Revision Petition stands **allowed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes

Internet:Yes

Speaking Order

To

1. Family Court at Chengalpattu.



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S.M.SUBRAMANIAM.J.,

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