



C.R.P. No. 2984 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2984 of 2023

and

C.M.P.No.18420 of 2023

Mani @ Devaraj

...Petitioner

.Vs.

Kalaiyarasi

...Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal order dated 05.06.2023 made in I.A.No.10 of 2023 in H.M.O.P.No. 140 of 2021 on the file of the Family Judge, Dharmapuri.

For Petitioner : Mr. V. Sakkarapani

ORDER

This petition is filed to set aside the Fair and Decreetal order dated 05.06.2023 made in I.A.No.10 of 2023 in H.M.O.P.No. 140 of 2021 on the file of the Family Judge, Dharmapuri.



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2. The case of the petitioner is that the petitioner married the respondent on 26.03.2018 at Paravasudeva Swami Thirukoil, Dharmapuri. Thereafter, there was some misunderstanding between the couple, due to which the respondent/wife left the matrimonial home on 15.04.2020. Hence, the petitioner/husband filed a divorce petition in H.M.O.P.No.140 of 2021 before the Family Judge, Dharmapuri and when the same was pending the respondent filed a petition in I.A.No.4 of 2022 in H.M.O.P.No.140 of 2021 seeking interim maintenance of Rs.25,000/- per month and a sum of Rs. 10,000/- as litigation expenses and the petition was partly allowed against which the petitioner filed a C.M.A No.887 of 2023 and Cr.M.P.No.8423 of 2023 dated 17.04.2023 to reduce the interim maintenance and the same was reduced to Rs.7,500/- from Rs.10,000/- The grievance of the petitioner is that the respondent is working in a private concern and earning Rs.25,000/- and in order to prove the same the pay disbursing officer i.e the manager of the concerned company has to be examined on the side of the respondent/wife. Hence, he filed a petition in I.A.No.10 of 2023 in O.P.No.140 of 2021 under Order 151 of C.P.C to re-open the case to examine the petitioner side further evidence and the same was dismissed vide order dated 05.06.2023. Aggrieved over the same, the petition has come up with this petition.



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3. The learned counsel for the petitioner submitted that the respondent is a working women and earning Rs.25,000/- per month and seeking maintenance is not fair. He further submitted that the learned Judge without considering the plea of the petitioner has erroneously dismissed the I.A filed by him. Hence he prays to allow this petition.

4. On a perusal of records it is seen that the petitioner herein has only filed a divorce petition in H.M.O.P.No.140 of 2021 before the Family Judge, Dharmapuri seeking for divorce and the respondent herein has claimed maintenance from the petitioner and the same was ordered. When this being the case, the petitioner ought to have ventilate his grievances only in the petition filed by him for divorce, instead of that, he has filed a petition in I.A.No.10 of 2023 in O.P.No.140 of 2021 to re-open the case to examine the evidence which is not proper. Further more the respondent is working in a private concern and calling the pay disbursing officer, who is superior to her and no way connected to the proceedings for examination is unnecessary for arriving a conclusion in the O.P. as well as I.A. In the impugned order the learned Judge has made an observation that to decide the divorce petition, the earning capacity of the respondent/wife is immaterial and dismissed the



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petition, which finding in the considered view of this Court is perfectly valid.

Therefore, there is no necessity to interfere with the impugned order passed by the Court below.

5. In view of the above, the order passed in I.A.No.10 of 2023 in H.M.O.P.No. 140 of 2021 on the file of the Family Judge, Dharmapuri is confirmed. Accordingly this Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

28.08.2023

smn

Index : Yes/No

Internet: Yes/No

To.

The Family Judge, Dharmapuri.



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V.BHAVANI SUBBAROYAN,J.
Smn

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