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Crl.RC.No.1093 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2023

DELIVERED ON : 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.RC.No.1093 of 2021

and

Crl.M.P.No.14017 of 2021

S.Selvamanikandan

...Petitioner

-Vs-

R.Bhuvaneswari

...Respondent

Prayer - Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C., to set aside the order dated 02.11.2021 made in M.P.1001 of 2019 in M.C.No.248 of 2018 on the file of the learned III Additional Principal Family Court at Karaikal.

For Petitioner : Ms.D.Chitra Maragatham

For Respondent : Ms.R.Radha Pandian

ORDER

The learned counsel for the revision Petitioner submitted that the revision Petitioner is the husband, the Respondent is the wife. The maintenance case was filed by the wife before the learned III Additional Judge Family Court, Chennai, in M.C.No. 248 of 2018 was filed by the



wife seeking maintenance, in the same miscellaneous petition in M.P.No.1001/2019 in M.C.248 of 2018 was filed for seeking interim maintenance of Rs.1,00,000/- per month to the Petitioner and her minor twin children and litigation expenses of Rs.25,000/-.

2. It is the contention of the learned counsel for the revision Petitioner / husband that the wife in the maintenance case, stated that the husband is running a company on his own and he is the director of that company. Whereas, the wife is working as part time and she is earning only Rs.10,000/- per month as per Assets and liabilities furnished by the Petitioner / wife before the learned Family Court.

3. It is the submission of the learned counsel for the revision Petitioner / husband that the revision Petitioner was the director of the company. Due to the case filed by the wife in maintenance case, he has to appear before the Family Court. As per the Family Court Act, parties are to appear regularly. They can engage counsel only in particular stage of the case, either during enquiry or arguments. In all other proceedings, the presence of the parties are required, therefore for the frequent appearance



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of the revision Petitioner / husband, Respondent in the maintenance case, he was forced to resign by the circumstances as well as the pressure on him by the other directors. In the assets and liabilities furnished by the wife in maintenance case, regarding assets and liabilities of the husband, she had stated that the income of the husband is actually was not the income of the husband, it was the income of the company. After filing of this case, due to the circumstances created by the wife, the husband had to appear as Respondent in the maintenance case. Therefore, he was forced to resign and now he is working as a software engineer for lesser salary, still with the salary available, he has to support himself, his parents and also their medical needs. Still due to the love and affection towards his own children, he had been contributing to the minors regularly. He had filed this petition seeking modification of the order.

4. It is the contention of the learned counsel for the revision Petitioner / husband that the wife had suppressed the fact that the revision Petitioner / husband had obtained the details of the wife and her source of income which is furnished as Additional typed set, in which, the learned counsel for the revision Petitioner invited the attention of this Court, the



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income of the wife having suppressed the fact of her availing salary, she is not entitled to get interim maintenance. As per the claim made by her, she has sufficient income to support her family. Therefore, the learned counsel for the revision Petitioner seeks to modify the cost imposed by the learned III Additional Judge, Family Court, Chennai in M.P.1001 of 2019 in M.C.No.248 of 2018 dated 02.11.2021.

5. Further, the learned counsel for the revision Petitioner / husband invited the attention of this Court, to the typed set of papers furnished by the revision Petitioner, in which, the revision Petitioner had obtained information regarding the payment and the status of the Respondent / wife under the Right to Information Act in the Employees Provident Fund Organization. In which, the Respondent in this revision petition and the Petitioner in the maintenance case Mrs.Bhuvaneshwari is stated to be a permanent employee, whereas she claim maintenance. She is a freelancer and earning only Rs.10,000/- per month. It is not so, as per the payment details obtained by the revision Petitioner / husband, the learned counsel for the revision Petitioner invited the attention of this Court, assets and liabilities of the Petitioner and the Respondent as furnished in this revision



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petition which was filed in M.C.No.248 of 2018, the first Petitioner / wife in Column C (Details of dependent Family members) is stated that she is working as a freelancer to the Software company (for 4 hours work) earning Rs.10,000 per month.

6. It is the submission of the learned counsel for the Petitioner is that wife is working as a freelancer and earning Rs.10,000/- per month, working four hours a day. While so, the learned III Additional Judge, Family Court, Chennai in the Interim order in M.P.No.1001 of 2019 in M.C.No.248 of 2018 have not considered maintenance of dependents of Rs.1,20,000/- per year for each daughter in "Sukanya Samriddhi Yojana".

7. Income from other sources of the Petitioner based on the assets and liabilities furnished by this revision Petitioner are as follows.

S.No	Column No	Source of Income	Amount
1	41	Digital Marketing freelancer	annual turnover of Rs.3,60,000/- gross profit of Rs.1,42,257/- Net Income of Rs.2,06,818/-.
2	43	Interest on bank deposit and FDRs	Rs.4,500/- per month



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S.No	Column No	Source of Income	Amount
3	51	Insurance	LIC - RS.10874/- p.a HDFC Life - RS.50,000/- p.a SBI Life - RS.99,000/- p.a
4	59	Other Expenditure	Sukanya Samriddhi Yojana -Rs.1,20,000/-
5	64	Investments	FDR in HDFC Bank - Rs.3,00,000/-
6	67	Movable Assets	TN07AU4021 (HONDA CIVIC CAR) - Rs.2,95,305/- (Car IDV) TN67F6797 (HERO SPLENDER BIKE) - Rs.50,000/- (Bike IDV Value) TN22DU1902 (HIMALAYAN) - Rs.2,00,000/- (Bike 2 IDV) Realme XT, Realme 6i -Rs.12,000/-, Rs.10,000/- DELL XPS Laptop - Rs.15,000/-
7	72	Unsecured Debts	HDFC Overdraft - Rs.2,70,000/-
8	75	Owner of the Residential Accommodation	Mahalakshmi (Sister)
5	63	Liquid Assets	HDFC Bank A/c.No.501001 18362270 Rs.47,013/- ICICI Bank A/c.No.035001 531851 Rs.1,66,001/-

8. Learned III Additional Judge, Family Court, Chennai on the strength of the income of the company, had construed as, though it is the income of the husband and had fixed the interim maintenance.



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9. The Revision Petitioner/ husband was one of the Board of Directors in the BDreamz Global Solutions Pvt Ltd, under Ministry of Corporate Affairs, Government of India. It was resolved by an ordinary resolution dated 01.04.2019, as pursuant to Section 115 read with Section 169 of the Companies Act, 2013, and the rules made thereunder, Mr. Selvamanikandan Shanmugam be and is hereby removed from his office as the director of the company with immediate effect. The resolution passed at the extra ordinary general meeting of M/s. BDreamz Global Solutions Pvt Ltd dated 29.04.2019, had resolved that pursuant to Section 169 and other applicable provisions of the Companies Act, 2013, and the rules framed thereunder, Mr. Selvamanikandan Shanmugam be and is hereby removed from his office as the director of the company with effect from the date of this meeting.

10. Therefore the finding of the Learned III Additional Judge, Family Court, Chennai, directing the Respondent / husband in maintenance case and the revision Petitioner herein directed him to pay Rs.20,000/- per month to the Petitioner / wife and Rs.15,000/- for each children towards interim maintenance is exorbitant. Therefore the learned counsel for the



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revision Petitioner seeks to modify the order. The Petitioner had been complied the condition of this Court in the order passed in Crl.M.P.No.14017 of 2021 in Crl.R.C.No.1093 of 2023 on the file of this Court by depositing Rs.20,000/- regularly as per the typed set furnished by him in Crl.O.P.No.1093 of 2023.

11. The learned counsel for the Respondent vehemently objected to the filing of the additional typed set filed by the learned counsel for the revision Petitioner herein and the same was not produced by the revision Petitioner / husband. Regarding the details of contribution by the wife, the Respondent in this Criminal revision petition and the Petitioner in the maintenance case, under the right to information act, from the Provident Fund Authorities cannot be looked into by this Court as the same was not furnished during the enquiry in M.P.No.1001 of 2019 in M.C.No.248 of 2018 before the Learned III Additional Judge, Family Court, Chennai.

12. Further, the learned counsel for the Respondent / wife submitted that the Petitioner had resigned from the Board of Directors is a made over resignation, he is still in the service of the BDreamz Global Solutions Pvt



Ltd which has branches through out India. The Learned counsel for the Respondent / wife submitted that the Besant Technologies has various branches. The claim of the revision Petitioner has to be rejected as it is a ploy adopted by the revision Petitioner to deny the wife, her dues as ordered by the Learned III Additional Judge, Family Court, Chennai. in M.P.No.1001 of 2019 in M.C.No.248 of 2018 dated 02.11.2021.

Point for consideration:

Whether the order passed by the learned III Additional Judge, Family Court, Chennai in M.P.No.1001 of 2019 in M.C.No.248 of 2018 is to be set aside as perverse?

13. Heard the learned counsel for the revision Petitioner / husband and the learned counsel for the Respondent / wife to perused the typed set of papers furnished by the revision Petitioner in the revision case, and the Respondent in this revision case, this Court had sought remarks from the learned Learned III Additional Judge, Family Court, Chennai regarding the amount deposited before the Learned III Additional Judge, Family Court, Chennai. The Learned III Additional Judge, Family Court, Chennai in her remarks, dated 14.09.2023 in Dis.No.4161 of 2023 had stated that the



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husband had deposited Rs.25,000/- on 22.08.2023 and Rs.75,000/- on 23.08.2023 on the account of M.C.No.248 of 2018. Except these two amounts, the revision Petitioner had not deposited any other amount in M.C.248 of 2018 as on 14.09.2023. The Respondent / wife has also filed a collection petition claiming arrears to the tune of Rs.16,55,000/- stating that there is no stay and the same is pending be on the file of the Learned III Additional Judge, Family Court, Chennai.

14. As per the proof affidavit filed by the revision Petitioner / husband, he had regularly paid maintenance amount through cheques drawn on ICICI Adyar Branch commencing from 061059, 061060 , 061061, 061062, 061063, 061064, 061065, 061066, 061067, 061068, 061069, 061070, 061071, 061072, 061073, 061075, 061076, 061077. He had paid Rs.2,00,000/- (Rupees two lakhs only) by way of cheque on 21.02.2022. Subsequently he had paid rupees Rs.15,000 on 18.06.2022, 26.09.2022, 26.10.2022, Rs.25,000/- on 10.04.2022, 17.06.2022, 19.05.2022, 19.08.2023. Rs.75,000/- on 22.08.2023 and further for all the other payments, he had paid Rs.20,000/- each, total to the tune of Rs.6,00,000/-. From 21.02.2022 till 22.08.2023, he had paid Rs.6,00,000/-



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by way of cheque and as per letter addressed by him to the learned principal Judge, Family Court, Chennai. As per the remark of the Learned III Additional Judge, Family Court, Chennai had filed a collection petition for arrears to the tune of Rs.16,55,000/- (Rupees sixteen lakhs fifty five thousand).

15. As per the order in Crl.M.P.No.14017 Of 2021, he had paid 50% of the amount as ordered by the Learned III Additional Judge, Family Court, Chennai as per the order in M.P.No.1001 of 2019 in M.C.No.248 of 2018 dated 02.11.2021. For the year 2019, 3 months (i.e., from 23.10.2019 to 31.12.2019), for the period 2020 - 2022, 36 months, and the year 2023, 8 months (i.e till August 2023) total 50,000 X 47 months = Rs.23,50,000/-. Out of which Rs.5,90,000 is paid.

16. As per the order of this Court in Crl.M.P.No.14017 Of 2021, he ought to have paid regularly Rs.10,000/- for the wife and Rs.7,500/- for each of the children. Therefore, Rs.10,000 + Rs.15,000 = Rs.25,000/- (3 months in 2019, 36 months from 2020 to 2022, for the year 2023, 8 months. If it is calculated, it comes to Rs.11,75,000/-.



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17. Considering the Corona lock down period and its suffocation of economy affecting the MSME sector, some leniency shall be shown to the Petitioner. Still he had not complied the conditions of the Court. He claims that he had subscribed to Sukanya Samriti Yojana, that is voluntary contribution that had not be considered to claim exemption from regular maintenance to be paid to the children.

18. As per submission of the learned counsel for the revision Petitioner, III Additional Judge, Family Court, Chennai, ought to have considered the voluntary statement of the wife as Petitioner in the maintenance case, that she is a freelancer working, 4 hours a day and earning Rs.10,000/- per month. So, the Petitioner who have been exempted from paying the maintenance to the wife, also on perusal of the records, it is found that the revision Petitioner herein as Respondent in maintenance case had filed GWOP, seeking custody of the minor children and the same is pending before the Learned III Additional Judge, Family Court, Chennai. Under these circumstances, the contention of the learned revision Petitioner submitted that the wife is not entitled to claim maintenance



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amount as the wife has suppressed the fact, that she is a regular employee and paying subscription to provident fund and also it cannot be accepted.

As he had not filed those documents in the maintenance case, regarding the claim of the husband, regarding exemption for the payment of the monthly dues to the Petitioner / wife in the maintenance case. The Respondent / wife in this criminal revision petition, the same is partly allowed regarding the maintenance case is only reduced for Rs.10,000/-. Considering the admission of the wife in the assets and liabilities, she is earning Rs.10,000/- per month as a freelancer. Rs.10,000/- for wife and Rs.30,000/- total Rs.40,000/- (Rs.40,000 X 47 months = 18,80,000/-. The Criminal Revision is partly allowed, **instead of Rs.23,50,000/-(50,000 X 47).**

19. As per the interim stay granted by this Court, the amount was reduced by 50% to deposit the amount Rs.11,75,000/-. But he had not complied, instead he had paid only Rs,6,00,000/- as per proof provided by the Petitioner. Subject to the verification by this Court, as this Court , accepts the remarks submitted by Learned III Additional Judge, Family Court, Chennai, in which he had stated he paid only Rs.1,00,000/- **(Rs.75,000/- + Rs.25,000/-).**



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20. It is for Learned III Additional Judge, Family Court, Chennai, to consider a fresh whether any amount is in the deposit as per the typed set furnished by the Petitioner / husband stating that he had paid Rs.6,00,000/-if the Learned III Additional Judge, Family Court, Chennai, arrives at conclusion, he had not deposited the amount as was stated before this Court. Learned III Additional Judge, Family Court, Chennai, can strike out the counter filed by the Respondent / husband in the maintenance case and set him as *ex parte*, thereby, proceeding with the trial based on the evidence in the maintenance case and pass appropriate orders for willful disobedience by the Respondent /husband.

21. Learned III Additional Judge, Family Court, Chennai is before setting him *ex parte* for this disobedience of the interim order, Learned III Additional Judge, Family Court, Chennai shall verify the accounts of the Court and also afford him an opportunity to pay the entire balance on a specified day. Learned III Additional Judge, Family Court, Chennai shall also consider the proceeding that the enquiry only for compliance of the interim order passed by the Learned III Additional Judge, Family Court,



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Chennai. Failure of the Respondent / husband in maintenance case to comply the interim condition, the Learned III Additional Judge, Family Court, Chennai, is within his/her judicial power to set Respondent / husband *ex parte* and proceed with enquiry based on the documents furnished by the wife as Petitioner and pass appropriate orders in the maintenance case. Also the Learned III Additional Judge, Family Court, Chennai is directed to dispose of the maintenance case, as well as the connected case between the same parties whether the petition on restitution of Conjugal rights or petition for divorce and GWOP on the file of the Learned III Additional Judge, Family Court, Chennai. All the connected petitions between same parties shall be disposed within a period of 3 months from the date of compliance of the interim order passed by the Learned III Additional Judge, Family Court, Chennai in M.P.No.1001 of 2019 in M.C.No.248 of 2018 dated 02.11.2021.

22. The point for consideration is answered partly in favour of the Petitioner / husband. The husband having filed Crl.R.C.No.1093 of 2021 expressing his difficulties, the same is considered leniently. Considering the fact that the intervening period, there was corona lock down and it had



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affected MSME sector including those self-employed sector. The order of the learned III Additional Judge, Family Court, Chennai, regarding direction to the husband as Respondent in maintenance case, Rs.20,000/- towards wife and 15,000/- towards his children is partly reduced only towards his wife regarding her admission in the petition that she as freelancer was earning Rs.10,000/- per month. It is the contention of the revision Petitioner / husband that the wife is self employed and she has regular job, she has suppressed the fact that she has been a freelancer , part time working in 4 hours a day, earning Rs.10,000/- per month. Actually it was not so, the revision Petitioner obtained particulars under Right to Information Act from the Provident fund authorities regarding regular monthly contribution by the wife. The attempt of the revision Petitioner / husband to mark the same was resisted by the wife. The learned counsel for Respondent / wife stating that those document was not produced before the learned Trial Court during the enquiry of M.P.No.1001 of 2019 in M.C.No.248 of 2018. This Court shall not consider the same. It is for the husband as Respondent in the maintenance case, while adducing evidence to mark those documents. For the present, the petition of the husband to set aside the order regarding Rs.20,000/- per month towards the wife is



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rejected. Instead of the same, it is reduced to Rs.10,000/- per month on the ground that wife is capable of earning Rs.10,000/- per month as per her own admission before the learned III Additional Judge, Family Court, Chennai, in the list of assets and liabilities. Therefore, instead of Rs.20,000/- ordered as maintenance to the wife by the learned III Additional Judge, Family Court, Chennai, it is reduced as Rs.10,000/- per month as maintenance to the wife. The amount of Rs.15,000/- each ordered by the learned III Additional Judge, Family Court, Chennai, towards the minor children is not modified.

23. In the light of the above, instead of Rs.20,000 + Rs.15,000 + Rs.15,000 = Rs.50,000/- to be paid as monthly interim maintenance to the wife and two minor children (twins), it is modified as Rs.10,000/- + Rs.15,000/- + Rs.15,000/- = Rs.40,000/-. Instead of Rs.50,000/- x 47 months = Rs.23,50,000/-, the Revision Petitioner has to pay Rs.10,000/- + Rs.15,000/- + Rs.15,000/- = Rs.40,000/- x 47 = Rs.18,80,000/-.

The **Criminal Revision Case is partly allowed**. The amount is reduced as above. If the Respondent / husband in the maintenance case



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does not pay the amount, the learned III Additional Judge, Family Court, Chennai, shall set him *ex parte*, after conducting enquiry based on the Petitioner/wife documents in support of her claim, the learned III Additional Judge, Family Court, Chennai shall pass appropriate orders.

The learned III Additional Judge, Family Court, Chennai, Family Court is within his/her powers to grant sufficient time to the Respondent in maintenance case, to comply the order within a reasonable time of one or two months. After complying the order, maintenance case is to be taken up for disposal. If the interim maintenance is not complied within a specified time, the Trial Court is within his/her power to set him *ex parte* and dispose of the maintenance case. Also, the learned III Additional Judge, Family Court, Chennai is directed to dispose off the connected case in case in GWOP, HMOP petition etc.

22.12.2023

gvn/shl/cda

Index : Yes/No

Speaking/Non-speaking order



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To
The III Additional Judge,
Family Court,
Chennai.

SATHI KUMAR SUKUMARA KURUP, J.,



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gvn/shl/cda

Order made in
Crl.RC.No.1093 of 2021
and
Crl.M.P.No.14017 of 2021

22.12.2023