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C.R.P.No.3788 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3788 of 2023

and

C.M.P.No.23520 of 2023

R.Arthy

... Petitioner

-Vs-

S.Premkumar

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the impugned order and decretal order dated 07.07.2023 passed in I.A.No.25 of 2022 in H.M.O.P. No. 134 of 2021 on the file of Principal Subordinate Court, Virudhachalam.

For Petitioner : Mr.E.C.Ramesh

ORDER

Challenging the impugned order passed in I.A.No.25 of 2022 in H.M.O.P.No.134 of 2021 by the learned Principal Sub-Judge,



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Virudhachalam, the Revision Petitioner preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondent is dispensed with.

3. Before the trial court, the respondent husband herein filed a petition in H.M.O.P. No. 134 of 2021 against the Revision Petitioner wife for the relief of divorce and the same was contested by her by filing counter objections. Now, the case is posted for P.W..1 evidence. At that time, she filed an interlocutory application in I.A.No. 25 of 2022 under Sec.24 of Hindu Marriage Act claiming interim maintenance. That application was dismissed by the trial judge stating that at the time of filing her counter objections, she has not filed the said application and only at the time of trial, she came forward with the said application. Challenging the said findings, the Revision Petitioner wife preferred this Civil Revision Petition.

4. Admittedly, the petition for divorce in H.M.O.P.No. 134 of 2021 was filed by the respondent husband and the same is pending before the trial court. During the pendency of the proceedings, she filed the said



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application claiming interim maintenance under Sec.24 of the Hindu Marriage, which reads as follows :-

“24. Maintenance Pendente lite and expenses proceedings.

24. Maintenance Pendente lite and expenses proceedings. Where in any proceeding 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.”

As per the aforesaid proviso, during the pendency of matrimonial proceedings, wife can claim interim maintenance and there is no fixation of time to file such application. Therefore, the order passed by the trial judge is erroneous one and it shows his non-application judicious mind. Hence, the findings rendered by the trial judge is liable to be set aside. However, with regard to the fact that the Revision Petitioner wife is having source of income, it has to be proved by the respondent husband by adducing evidence, but no such evidence adduced on his side. Accordingly, this Civil Revision Petition is allowed and the observation made by the trial judge in I.A.No.25 of 2022 in H.M.O.P.No. 134 of 2021



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is set aside and the said application is ordered to be allowed. The trial judge is directed to take the application on file and give notice to the respondent husband. On hearing both sides, the trial judge is directed to consider the application and pass orders on merits within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

Principal Sub-Judge, Vridhachalam.



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T.V.THAMILSELVI, J.

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