



C.R.P.No. 4301 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4301 of 2023

and

C.M.P.No.26189 of 2023

M.Selvi

.. Petitioner

Vs

K.T.Shivanesan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in H.M.O.P.No.43 of 2020 on the file of the Sub-Court, Paramathi.

For Petitioner : Mr. J. Prithivi

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.1 of 2022 in H.M.O.P.No.43 of 2020 filed by the revision petitioner / wife claiming interim maintenance from her husband / the respondent herein. H.M.O.P.No.43 of 2020 was filed by her husband



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claiming divorce.

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2. On hearing both sides, the trial Judge dismissed the application holding that the revision petitioner / wife is qualified with M.Sc.B.Ed and by conducting tuition, she is earning Rs.8,000/-. On the other hand, the husband who is qualified with M.Sc., B.Ed with PG.D.C.A., employed as Lab Assistant in a private college earning only Rs.6,900/- per month. Therefore, she is having sufficient source, on the other hand the husband is not having sufficient source of income. Accordingly, the application was dismissed. Challenging the said finding, the wife has preferred this revision.

3. The learned counsel for the petitioner / wife submits that the respondent / husband, is duty bound to maintain his wife and as a father, he is duty bound to maintain his child, since the child is being minor and under the custody of the mother. Instead of maintaining the wife and child, she was forcibly sent out from the matrimonial home by the husband. Further, the learned counsel submits that the petitioner is not having sufficient



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income to maintain herself and the child. Therefore, she claimed interim maintenance but the trial Judge, without considering the legal aspects that as a father he bound to maintain the child but erroneously dismissed the application in its entirety. Hence, prayed to set aside the same.

4. On perusal of the records, it reveals that the husband filed petition for divorce on the ground of cruelty and now the wife is staying at her parents home with minor child. There is no proof that the husband has taken steps for reunion. On the other hand, he straight away filed petition for divorce where the wife is claiming interim maintenance, as she is entitled for herself and her minor child, till the disposal of the OP proceeding. There is no proof on the side of the husband that he has no source of income. On the other hand, the trial Judge erroneously held that the wife is earning Rs.8,000/- per month by taking tuition. Even she is having sufficient income but the respondent / husband is bound to maintain her child but he failed. Therefore, the trial Judge erroneously considering all the legal aspects dismissed the application, which is liable to be set aside.



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5. Therefore, the order passed by the trial Judge in I.A.No.1 of 2022 in H.M.O.P.No.43 of 2020 on the file of the Sub Court, Paramathi is set aside directing the husband / respondent to pay Rs.8,000/- per month as interim maintenance to the wife and child until modified by the Court of law from the date of the filing of the OP. If he fails to pay the maintenance, the trial Judge is empower to strike off the entire O.P., proceeding as per the manner known to law.

6. In the result, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Neutral Citation :Yes/No
AT

To
The Sub Court, Paramathi.



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T.V.THAMILSELVI, J.

AT

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