

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1483 of 2022
and
C.M.P(MD)No.6218 of 2022

Vimalsingh

... Petitioner/Respondent/
Petitioner

Vs.

Rajasudha

...Respondent/Petitioner/
Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the order passed by the learned Subordinate Judge, Ambasamudhram, in I.A.No.1 of 2020 in H.M.O.P.No. 120 of 2019 vide his order dated 26.03.2022 and set aside the same.

For Petitioner
For Respondent

:Mr.P.Samuel Gunasingh
:Mr.D.Venkatesh

ORDER

This civil revision petition is filed as against the order dated 26.03.2022 passed in I.A.No.1 of 2020 in H.M.O.P.No.120 of 2019 by the learned Subordinate Judge, Ambasamudhram.

2.The revision petitioner is the husband, who filed H.M.O.P.No.120 of 2019 before the Subordinate Court, Ambasamudhram, for divorce. During the pendency of the said H.M.O.P., the respondent/wife moved an application in I.A.No.1 of 2020 under Section 24 of Hindu Marriage Act, for interim maintenance for her and her minor child.

3.The said application was resisted by the petitioner/husband stating that the respondent/wife is working as a Head Constable and earning a sum of Rs.35,000/- per month. Therefore, she is not entitled for any maintenance. Further, the revision petitioner/husband was earning only a sum of Rs. 18,000/- per month, at the time of filing the petition and he has to maintain his mother and his sister. Therefore, the said application filed by the respondent/wife is liable to be dismissed.

4.The trial Court, on perusal of the averments made in the petition and in the counter affidavit and also the arguments advanced by the respective counsel, partly allowed the said petition and ordered a sum of Rs. 10,000/- as interim maintenance to the minor child. Aggrieved by this, the present civil revision petition is filed.

5.The learned counsel appearing for the petitioner/husband submitted that the respondent/wife is claimed only Rs.2,000/- as monthly interim maintenance for the minor child. However, the trial Court has ordered Rs.10,000/- for the minor child is in illegal. The learned counsel further submitted that the trial Court failed to take note of the fact that the petitioner has to take care of his age old mother and his divorced sister and his sister's son. As on date, he is receiving a sum of Rs.21,307/- as monthly income, whereas the respondent/wife is receiving a sum of Rs.35,000/- as monthly income. Apart from that, the respondent/wife has suppressed the fact that she is working as a Head Constable and filed an application in D.V.C.No.12 of 2022 before the Judicial Magistrate Court, Cheranmahadevi. The said DVC petition was allowed and ordered a sum of Rs.4,000/- as monthly maintenance to the respondent/wife. Hence, the petitioner is receiving only a meagre income and he is unable to pay the maintenance amount as awarded by the trial Court. Therefore, he prays for setting aside the order of the trial Court.

6.On the other hand, the learned counsel appearing for the respondent/wife submitted that the petitioner/husband has got sufficient income to pay the maintenance amount as awarded by the trial Court. Therefore, no infirmity found in the order passed by the trial Court and the

civil revision petition is liable to be dismissed.

7.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the materials available on record.

8.It is useful to extract Section 24 of the Hindu Marriage Act, 1955, hereunder:

24.Maintenance pendente lite and expenses of 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:

9.The trial Court, on considering the earning capacity and also the employment of the respondent/wife, rightly ordered to pay the maintenance for the respondent/wife. But as far as the minor child is concerned, the trial Court has considered the welfare of the minor child and rightly ordered a sum of Rs.10,000/- as monthly maintenance for the child alone.

10.Considering the fact that the revision petitioner has to maintain his mother and his divorced sister and his sister's son and the income of the revision petitioner and also considering the fact that the respondent is earning considerable amount to maintain herself and her minor child, this Court fixed the monthly maintenance of the minor child at Rs.8,000/- and the petitioner shall pay the said amount on 10th of every English Calendar Month and the arrears amount ie., from the date of petition till the date of this order, shall be paid, within a period of two months in two installments, from the date of receipt of a copy of this order. Further, the petitioner is also directed to pay a sum of Rs.4,000/- to the respondent/wife as per the order passed in D.V.C.No.12 of 2022.

11.With the above direction and observation, this Civil Revision Petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

05.09.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1.The Subordinate Court,
Ambasamudhram.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

K.GOVINDARAJAN THILAKAVADI, J.

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