



C.R.P.(MD) No.2183 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2023

CORAM:

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

C.R.P.(MD) No.2183 of 2022
and
C.M.P(MD) No.10168 of 2022

Muthuraja

... Petitioner

Vs.

Mariammal

... Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.04.2022 passed in I.A.No.1 of 2021 in H.M.O.P No.74 of 2020 on the file of the Subordinate Judge, Ambasamudram.

For Petitioner : Mr.S.S.Thesigan

For Respondent : M/s.Karthika
for M/s.Right Law Associates



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ORDER

The present revision petition has been filed by the petitioner/husband against the order dated 23.04.2022 passed by the learned Sub Judge, Ambasamudram in I.A.No.01 of 2021 in H.M.O.P.No.74 of 2020. In the said order, the learned Sub Judge has granted interim maintenance to the respondent/wife at the rate of Rs.12,000/- per month to be paid by the petitioner/husband from the date of petition till the date of disposal of the divorce petition. In addition the petitioner/husband is directed to pay a sum of Rs.7,000/- for litigation expenses.

2. Brief facts leading this revision are as under:-

(i) Both the revision petitioner and the respondent got married on 22.11.2015 and they were living together. Thereafter, the relationship between the parties got strained in the year 2020. The respondent/wife filed a divorce petition in HMOP No.74 of 2020 on the grounds of cruelty and infertility. During pendency of HMOP, the respondent/wife filed a petition in I.A.No.1 of 2021 for interim maintenance under



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Section 24 of Hindu Marriage Act, claiming interim maintenance pendente lite of Rs.20,000/- and also sum of Rs.10,000/- to meet litigation expenses during the pendency of the divorce petition. In the said application, the respondent/wife pleaded that she was having no source of income to maintained herself and that she is dependent upon her parent for her day-to-day needs and requirements. She had further stated that the petitioner/husband is working as Supervisor in Spice Jet Airline and earning a sum of Rs.50,000/-. Apart from that, he is deriving a sum of Rs.1,00,000/- as agricultural income.

(ii) The said application was resisted by the petitioner/husband contending that the averments made in the divorce petition are false. The respondent/wife has deserted him on her own accord. She has received all her household articles from the petitioner/husband in pursuant to the complaint lodged by her in the police station. His father is suffering from Heart disease due to the attitude of the respondent/wife. Since he is taking care of his father, he is unable to go for a job. He is still willing to live with his wife.



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(iii) The learned Sub Judge, Ambasamudram, in the impugned order has granted interim maintenance to the respondent/wife at the rate of Rs.12,000/- per month and Rs.7000/- for litigation expenses to be paid by the petitioner/husband from the date of petition till the date of disposal of divorce petition. Aggrieved by the said order, the petitioner/husband preferred this revision petition.

3. The learned counsel for the revision petitioner would submit that the petitioner is not earning a sum of Rs.50,000/- as claimed by the respondent/wife and the same is not supported by any material evidence. The petitioner is earning only a sum of Rs.29,999/- per month and with that income, he is maintaining himself and his ailing father, who is under treatment for his acute cardiac disease. He has produced his salary certificate to prove his income. The trial Court erroneously fixed the maintenance amount at Rs.12,000/- per month in the absence of any material evidence, which is arbitrary and illegal.

4. On the other hand, the learned counsel for the respondent/wife



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at the outset submitted that the petitioner/husband failed to establish his income before the trial Court. In fact, the petitioner/husband in his counter affidavit has stated that he left the job to take care of his father. He had not disproved the fact that he is earning a sum of Rs.50,000/- per month as claimed by the respondent/wife. She would further submit that the principle of providing maintenance is to ensure the living condition of respondent/wife, whereas, in the present case the respondent/wife is yet to receive the maintenance amount as per the order of the Trial Court.

5. Heard on both sides and records perused.

6. The parties are entangled in making allegations and counter allegations against each other. This Court is not inclined to go into the merits of the rival contentions advanced by the parties in respect of the averments made in the divorce petition. The only question falling for consideration is whether the respondent/wife is entitled to maintenance pendente lite and whether the amount of Rs.12,000/- awarded by the trial Court is on higher side.



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7. The Court exercises wide discretion in the matter of granting maintenance pendente lite, but the discretion is judicial and neither arbitrary nor capricious. It is to be guided, on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of Hindu Marriage Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the husband's own income and the income of the wife (Ref: Manish Jain Vs Akanksha Jain, on 30.03.2017 in CMA No. 4615 of 2017, SC).

8. In the present case, at the time of filing the application under Section 24 of the Hindu Marriage Act, the respondent/wife was not having any income to support her. Section 24 of the Hindu Marriage Act



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empowers the Court in any proceeding under the Act, if it appears to the Court that either the wife or the husband, as the case may be, as no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may be seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. The Court must take into consideration the status of the parties and the capacity of the spouse and to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation. The Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court.

9. In the present case, at the time of claiming maintenance pendente lite when the respondent/wife had no sufficient income capable of supporting herself. At the same time, the income proof submitted by



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the petitioner/husband is also taken into consideration. According to the salary slip, his monthly income is only Rs.29,999/-. The same is not rebutted by the respondent/wife. Apart from that, the petitioner/husband has to take care of his ailing father, who is suffering from heart disease. Though the trial Court was justified in ordering maintenance, in my view the maintenance amount of Rs.12,000/- ordered by the learned Sub Judge is little on the higher side. Therefore, in the interest of justice, the same is reduced at Rs.10,000/- per month. With respect of the amount ordered for litigation expenses at the rate of Rs.7,000/- is not in dispute.

10. In the result, the order impugned herein is set aside and the Civil Revision Petition is allowed. The amount of Rs.12,000/- awarded as maintenance pendente lite is reduced to Rs.10,000/- per month. The petitioner/husband is directed to pay the arrears at the rate of Rs.10,000/-, from the date of the petition till the date of this order in three installments before 01.10.2023. If the petitioner/husband has paid or deposited any amount of maintenance pursuant to the order of this Court dated 02.11.2022, the same shall be set off against the arrears to be



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paid by the petitioner/husband. The maintenance pendente lite at Rs.10,000/- is to be paid to the respondent/wife by the petitioner/husband on or before 10th of every English Calender Month till the disposal of the divorce petition. The respondent/wife is at liberty to withdraw the amount by filing necessary application before the trial Court. Incase, the petitioner/husband does not comply with the order, as above, including for payment of arrears, he would visited with all consequences including action for contempt of Court. No costs. consequently, connected miscellaneous petition is closed.

05.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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Note: Issue order copy on 05.07.2023

To

The Subordinate Judge,
Ambasamudram.



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K.GOVINDARAJAN THILAKAVADI, J.

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