



CRP No.2009 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.2009 of 2024

D.Alltrinsamkumar

.. Petitioner

-VS-

R.Regini

.. Respondent

Prayer: Petition filed under Article 227 of the Constitution of India against the fair and final order dated 24.11.2023 in I.A.No.1 of 2022 in I.D.O.P.No.791 of 2022 on the file of the VII Additional Principal Family Court, Chennai.

For Petitioner : Ms.R.Kalaiyarasi

For Respondent : Mr.Sivashanmugam

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ORDER

This civil revision petition arises against the order passed by the learned VII Additional Principal Family Court at Chennai in I.A.No.1 of 2022 in IDOP. No.791 of 2022 dated 24.11.2023.

2. IDOP. No.791 of 2022 was presented by the civil revision



CRP No.2009 of 2024

petitioner invoking the provisions of Section 10(1)(x) of the Indian Divorce Act, 1869. There is no dispute in the relationship between the parties. The civil revision petitioner married the respondent on 14.07.2008. The parties being Christians, the marriage took place as per the Christian customs and rites. From the wedlock, two children were born to the couple. The first child is a female child born on 19.07.2009 and the second child was born on 06.03.2013 which is a male child. Unfortunately, the first child is a "special child" as she suffers from cerebral palsy. The parties separated in the year 2018. On being served with the summons in the petition, the respondent-wife has presented her counter.

3. Thereafter, invoking the provisions of Sections 36 and 41 of the Indian Divorce Act, 1869, she took out an application to direct interim maintenance to be paid by the civil revision petitioner at the rate of Rs.30,000/- per month for herself; Rs.30,000/- for the children and Rs.50,000/- towards litigation expenses.

4. It was her plea that the civil revision petitioner is running a Gymnasium under the name and style of "9th Mile Fitness Studio" at



CRP No.2009 of 2024

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Villivakkam and is generating an income of around Rs.2.5 lakhs per month.

The petitioner filed a counter to the same. Inter alia, he contended that his monthly income is around Rs.50,000/- per month.

5. The husband and the wife filed their affidavit of assets. In the affidavit of assets, the husband took a curious plea that his income was only Rs.20,000/- per month. In addition, he pleaded, he had taken a loan to a tune of Rs.10 lakhs for development of his business, a hand-loan for Rs.8 lakhs, a car loan for which he was paying an amount of Rs.8,000/- per month and additional expenses of Rs.2,50,000/- for purchase of gym equipments in the financial year 2022. The affidavit of assets would also show that while his gross income is Rs.20,000/-, his net income ranges from Rs.20,000/- to Rs.25,000/-. Even in the affidavit, he would plead that his wife is making money by resorting to tailoring work and is also working in a flour mill and indulging in chit finance.

6. The learned trial Judge, on receipt of the counter and affidavit of assets, granted the relief of interim maintenance to the tune of Rs.18,000/- per month for the respondent and the two children from the date of filing of



CRP No.2009 of 2024

the petition. He, however, did not grant litigation expenses as sought for and directed one time payment of Rs.15,000/- towards litigation expenses.

Aggrieved by the same, the present revision .

7. Heard Ms.Kalaiyarasi for the civil revision petitioner and Mr.S.Sivashanmugam for the respondent.

8. Before I commence the judgment, I have to remind myself the scope of my jurisdiction under Article 227 of the Constitution of India while dealing with an application for interim maintenance. A Court should loath to interfere with an order of interim maintenance unless and until the learned trial Judge has not applied his mind to the facts of the case or when the amount fixed is exorbitant or arbitrary when compared to the income that is generated by the husband.

9. Insofar as the facts of the case are concerned, there is no dispute that the civil revision petitioner and the respondent are husband and wife and the wedlock has produced two children, of whom one is a special child. It is further not in dispute that the wife was working as a lab technician at



CRP No.2009 of 2024

the time of marriage and the respondent was employed in a shipping company. Thereafter, he has decided to start his own business of running a fitness studio. The clear and categorical statement of the wife is that the husband generates Rs.2.5 lakhs from the fitness studio. To this assertion, the husband filed a counter denying this amount as income, but had pleaded that he is making only Rs.50,000/- per month. As pointed out above, when the affidavit of assets was filed, he reduced this income to only Rs.20,000/-.

10. A reading of the affidavit of assets makes me conclude that the husband is a financial wizard since he has been able to generate a net income of Rs.25,000/- when his gross income is only Rs.20,000/- and even from Rs.20,000/- that he is generating, he has been in a position to serve his loans including car loan, a mortgage as well as towards discharge of pledge of the health equipment that is available in his Gym. I am pointing out these aspects because it is clear that the husband, having realised that he had committed an error, by disclosing the income that he was making at Rs.50,000/- per month, has deliberately filed a false affidavit in his affidavit of assets and liabilities in order to reduce the quantum of income and consequently reduce his liabilities towards his family.



CRP No.2009 of 2024

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11. In the very judgment that the Supreme Court directed the parties to file affidavit of assets and liabilities, that is, in ***Rajnish vs. Neha, (2021) 2 SCC 324***, the Court specifically held that even if the wife is generating income, it is the sacrosanct duty of the husband to maintain his family. This duty looms large in the present case on account of the fact that the first child is a special child. The affidavit of assets also concedes that the person who is trained as a lab technician is working in a flour mill.

12. The Court below taking Rs.50,000/- as income of the husband has only ordered nearly one-third to be paid towards the maintenance of the wife as well as the two children. One-third works out to around Rs.6,000/- per head. In the metropolitan city of Chennai, Rs.6,000/- per head cannot be said to be excessive or unreasonable.

13. Furthermore, there is yet another circumstance to hold against the civil revision petitioner. Despite the fact that there were arrears of Rs.3,45,000/-, the husband on the directions of this Court had settled only Rs.45,000/- leaving aside a sum of Rs.3 lakhs to be paid to his family. He did not do so despite the fact that this Court, on his request, had granted him



CRP No.2009 of 2024

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time from 24.07.2024 to 27.08.2024. The civil revision petitioner had sought three weeks to settle the amount of Rs.3 lakhs or to make further substantial payments. Even then, the petitioner has failed to pay the arrears. He has failed to prove his bonafides.

14. In the light of the above discussion, I do not find any merit in the revision. The civil revision petition is dismissed. The wife will be entitled to the costs of Rs.15,000/- in this revision. In case, the husband does not clear the arrears and the default continues, it is open to the respondent wife to take such appropriate measures as is open to her, including striking out the divorce petition, before the learned Family Court.

29.08.2024

Index : Yes/No
Neutral Citation : Yes/No

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To

The VII Additional Principal Family Court,
Chennai.



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CRP No.2009 of 2024

V.LAKSHMINARAYANAN, J.

(sra)

CRP No.2009 of 2024

29.08.2024