



CRP No.333 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.333 of 2023 and
CMP No.2823 of 2023

P.Yoganandhan

... Petitioner

Vs.

1. Kanimozhi
2. M.Palaniappan
3. Meenachi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.01.2020 made in CMP No.3475/2019 in CMP No.2354/2019 in DVOP No.71/2018 by the learned Judicial Magistrate, Additional Mahila Court, Salem.

For Petitioner : Mr.V.Subramanian

For Respondents : Mr.K.R.Samratt for first respondent



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 06.01.2020 made in CMP No.3475/2019 in CMP No.2354/2019 in DVOP No.71/2018 by the learned Judicial Magistrate, Additional Mahila Court, Salem.

2. The petitioner herein is the husband of the first respondent and son of the respondents 2 and 3. The first respondent/wife has filed the above DVOP No.71/2019 seeking protection, residence and monetary relief. Pending petition, the first respondent has filed a petition in CMP No.2354/2019 seeking interim maintenance and the same was ordered on 21.03.2019, directing the petitioner to pay a sum of Rs.30,000/- as interim maintenance. Since the above said order was an exparte order, the petitioner herein has filed CMP No.1655/2019 to set aside the above order and it was ordered on 15.05.2019 and above CMP No.2354/2019 was restored to file. In the meanwhile, the first respondent has filed another petition in CMP No.3475/2019 seeking maintenance. Therefore, both



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petitions are taken together for disposal and common order has been passed on 06.01.2020, by directing the petitioner to pay a sum of Rs.50,000/- as interim maintenance. Challenging the above order, this civil revision petition has been filed.

3. Heard the counsel for the petitioner and the learned counsel appearing for the second respondent.

4. The petitioner herein is the husband of the first respondent and the above said DVOP No.71/2018 has been filed against the petitioner by the first respondent. In the earlier petition in CMP No.2354/2019, a sum of Rs.30,000/- was ordered as maintenance, which is an exparte order. However, on petition filed by the petitioner herein, the above order was set aside and the petition was restored to file. Subsequently the above petition was taken along with CMP No.3475/2019 and a sum of Rs.50,000/- was ordered towards maintenance.

5. It is the contention of the learned counsel for the petitioner that, in the petition filed by the first respondent seeking maintenance, the petitioner has filed counter affidavit, wherein, he has not stated anything about his



foreign employment. However, without any materials to show his income, the learned Magistrate has quantified an amount of Rs.50,000/- per month as maintenance, as though the petitioner herein is at abroad and is earning a sum of Rs.2,63,750/- per month. Therefore, the learned counsel for the petitioner submitted that the matter may be remanded back to the Trial Court to quantify the maintenance amount properly.

6. The learned counsel for the first respondent submitted that the first respondent also has not filed any materials to show her income.

7. Admittedly, the petitioner as well as the first respondent have not filed any affidavit, disclosing their respective assets and liabilities, as mandated by the Hon'ble Supreme Court in ***Rajnesh Vs. Neha 2021(1) MLJ (cri) 124***. But, in the impugned order, the learned Magistrate has not stated anything about the materials for arriving such amount of Rs.50,000/- towards maintenance, which is unsustainable. Therefore, this court is inclined to set aside the impugned order and remand back the matter to the learned Magistrate for arriving the maintenance amount properly.



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8. Accordingly, the impugned order passed in CMP No.3475/2019 in CMP No.2354/2019 in DVOP No.71/2018, dated 06.01.2020 is set aside. The matter is remanded back to the learned Judicial Magistrate, Additional Mahila Court, Salem to quantify the interim maintenance. The learned Magistrate is directed to decide the matter on merits, after receiving the affidavit, disclosing the assets and liability from the petitioner as well as the first respondent, within two weeks from the date of receipt of a copy of this order.

9. With the above direction, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

The Judicial Magistrate, Additional Mahila Court, Salem.

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