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C.R.P.(PD).No.334 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.334 of 2023 &
C.M.P.No.2826 of 2023

K.Sivakumar

... Petitioner

-Versus-

C.P.Saranya

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 15.11.2022 in I.A.No.2 of 2019 in HMOP.No.11 of 2019 on the file of the learned Subordinate Judge, Sankari.

For Petitioner : *Ms.P.Megnath Nair*

For Respondent : *Ms.S.Tamilselvi Santhanaraman*

ORDER

This civil revision petition arises against the order of the learned Subordinate Judge at Sankari in I.A.No. 2 of 2019 in HMOP.No.11 of 2019.

2. HMOP.No.11 of 2019 has been filed by the respondent/wife seeking



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restitution of conjugal rights. This petition was filed on 01.03.2019. Prior to this proceedings, the husband has initiated a proceeding for divorce on 21.06.2018 before the Court of Subordinate Judge at Tambaram in HMOP.No.612 of 2018. Pursuant to the order of this Court in a transfer proceeding, the case was withdrawn from the file of the Subordinate judge, Tambaram and transferred to the file of the Subordinate Court at Sankari to be heard and disposed of along with HMOP.No.11 of 2019. On transfer, HMOP.No.612 of 2018 has been renumbered as HMOP.No.96 of 2019. In the petition filed for restitution of conjugal rights, the wife took out an application for grant of interim maintenance of Rs.25,000/- per month and Rs.30,000/- towards litigation expenses.

3. The case of the wife is that she is unable to maintain herself and the husband is earning a sizable income. He also possesses properties in and around the city of Chennai, apart from owning a four Wheeler and a two Wheeler. The wife would plead that as the husband is an MBA graduate, working in LTI, Perur as a business analyst, he should be directed to pay the aforesaid amount.



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4. On service of notice on the husband, he filed a counter stating that his brother-in-law is working in the state of Andhra Pradesh and drawing a sum of Rs.1,50,000/- per month as salary and further the father-in-law is making about Rs.45,000/- per month. He would further state that his wife is an M.Sc., B.Ed., and therefore sufficiently qualified to take tuition for students and in fact she is making considerable amount of money to the tune of Rs.15,000/- by tutoring 75 students. Therefore, he sought for the dismissal of the maintenance application.

5. On the basis of these pleadings, the wife filed Ex.A1 to Ex.A3. Neither the wife nor the husband had entered the witness box.

6. The learned Trial Judge, on the basis of the evidence available before him, came to the conclusion that the husband is liable to pay a sum of Rs.15,000/- from the date of filing of the maintenance petition. He also ordered Rs.20,000/- as litigation expenses. This sought to be challenged in the present revision.

7. Notice was issued in this revision on 14.02.2023 and an order of interim stay of impugned order was granted on condition that the husband pay



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Rs.10,000/- per month towards maintenance as an interim arrangement. The matter was listed before me today for final hearing.

8. I have heard Ms.Meghana Nair for the petitioner and Ms.Tamilselvi Santhanaraman for the respondent.

9. Ms.Meghana Nair would submit that the wife is taking tuition and earning a considerable sum of money and therefore, the husband need not be called upon to pay a sum of Rs.15,000/- per month as maintenance.

10. Per Contra, Ms.Tamilselvi Santhanaraman would submit that the mere fact that the wife is capable of earning does not mean that she is disentitled from seeking maintenance. For this proposition, she would rely upon the following judgments of the Supreme Court:

(a) ***Sunita Kachwaha and Others vs. Anil Kachwaha, AIR 2015 SCC 554***; and

(b) ***Shalja and Another vs. Khobbanna, (2018) 12 SCC 199***.



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11. I have carefully considered the arguments on either side.

12. The relationship between the parties is not in dispute. The petitioner and the respondent married on 04.06.2017 and set up their matrimonial home at Chennai. The qualifications of the respective parties are also not in dispute. The husband possesses a degree in Masters of Business Administration and the wife is a graduate with additional qualification of B.Ed.

13. Due to the disputes and the differences, the husband and wife have separated and the wife is residing with her father in Sankari. When the relationship between the parties are admitted and the wife has produced a prima facie evidence that the husband is working as a financial analyst through his self declaration in LINKEDIN as Ex.A3, the husband has not troubled himself to enter the witness box and depose to the contra. Therefore, the only evidence available before the court was the evidence that has been produced by the wife. If the husband was not making the amount which was alleged by the wife, he could have produced his income tax records or his salary slips or some similar documents to substantiate the same. Unfortunately, he did not do so.



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14. The principle for grant of maintenance has been settled by the Judgment of Delhi High Court in *Bharat Hegde vs Saroj Hegde, AIR 2007 Del 197*. The court held that a wife is entitled to be maintained in the same status as she would have in case she had continued to reside in the matrimonial home. The fact that the husband is working as a financial analyst is not in dispute. For the mere fact that the brother of the respondent is working and generating a larger amount of money does not improve the case of the civil revision petitioner. Ms.Tamilselvi Santhanaraman would submit that it is not the blood brother of the wife but is a cousin who is employed in Andhra Pradesh and making a considerable money.

15. In the matrimonial matter, the fact that the father-in-law or the brother-in-law is a billionaire or pauper does not make a difference. The husband is duty bound to maintain the wife in case the wife is not in a position to maintain herself. As pointed out above, the maintenance that the husband should give must be commensurate to the same status as she had during the matrimonial relationship. The maintenance ordered by the court is only Rs.15,000/- which works out to Rs.500/- per day.

16. I am sure that if the respondent had been residing with the petitioner



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she would have been spending more money than this amount. The husband, having had an opportunity, had failed to give any evidence and he cannot rely upon the fact that the wife is capable of generating income. This position has been settled by the two judgments referred to above by Ms.Tamilselvi Santhanaraman.

17. Sitting in the revision and especially over the interlocutory order for maintenance, the scope of interference is limited. I cannot set aside the order of maintenance unless and until it is capricious, arbitrary and reeks of non-application of mind. I do not find the order impugned suffers from these vices. Therefore, I am left with no other option than to confirm the order of the learned Subordinate Judge at Sankari in I.A.No.2 of 2019 in HMOP.No.11 of 2019 dated 15.11.2022.

18. The husband, who has been paying Rs.10,000/- from February 2023 till July 2024, is granted 4 weeks time to clear the arrears for the said period and he shall continue to pay the amount of Rs.15,000/-, which has been ordered by the court below in the impugned order.

19. This civil revision petition is **dismissed with a cost of Rs.10,000/-**. On confirmation that the pleadings are complete and the matter is ready for trial, the learned Trial Judge shall take up both HMOP.No.11 of 2019 and



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HMOP.No.96 of 2019 for disposal giving it all the priorities it deserves as the proceedings have been pending for the past five years. It is made clear that if the husband defaults in payment of maintenance even for a month, the Court can exercise its inherent power and ensure that unless and until the husband clears the maintenance, he will not be entitled to put up a defence. Consequently, the connected miscellaneous petition is closed.

12.07.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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V.LAKSHMINARAYANAN, J.

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To
The Subordinate Judge, Sankari

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