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C.R.P.No.2120 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2120 of 2024
and C.M.P.No.11271 of 2024

Appandai Raj Petitioner

-Vs-

N.Aishwarya Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 20.12.2023 made in I.A.No.3 of 2023 in HMOP No.1818 of 2021 on the file of the Subordinate Judge at Alandur.

For Petitioner : Mr.R.Bharath Kumar

For Respondent : Mr.S.Conscious Ilango

ORDER

This Civil Revision Petition arises against the order passed by the learned Subordinate Judge, Alandur in I.A.No.3 of 2023 in H.M.O.P.No.1818 of 2021.

2. There is no dispute in the relationship between the parties. The civil revision petitioner is the husband. He married the respondent on 29.06.2015 at Madipakkam in Chennai. From the wedlock, a male child was born on 31.12.2016.



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Due to differences and disputes, the parties have separated. The wife has initiated H.M.O.P.No.1818 of 2021 on the file of the Subordinate Court at Alandur seeking for divorce. She has alleged acts of cruelty against the husband in order to get the decree of divorce.

3. Pending the H.M.O.P., the wife took out an application invoking Section 26 of the Hindu Marriage Act, seeking for a sum of Rs.40,000/- as interim maintenance for the child. This application was numbered as I.A.No.3 of 2023.

4. After receipt of a counter from the civil revision petitioner / husband, the Court fixed a sum of Rs.25,000/- as interim maintenance to be paid from the date of the petition till the date of disposal of the H.M.O.P. Aggrieved by the same, the present revision.

5. Notice was ordered in this revision and Mr.Conscious Ilango has entered appearance for the respondent / wife.

6. I heard Mr.R.Bharath Kumar for the civil revision petitioner and Mr.Conscious Ilango for the respondent.

7. When the matter came up on 15.10.2024, I requested Mr.Venkatakrishnan, junior counsel of Mr.Conscious Ilango to produce records to



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substantiate that the wife is spending a sum of Rs.2,00,000/- as educational expenses for the child alone. Mr.Conscious Ilango has produced the records today pointing out that the child is studying in Seed Academy, Perungudi, Chennai in Grade II-C. The fee receipts that has been paid by the respondent wife to the school adds up to Rs.1,80,000/- per year. These facts are not disputed.

8. Mr.Bharath Kumar refers to the affidavit of assets and liabilities of the civil revision petitioner that he has presented today to urge that the civil revision petitioner is expending about Rs.35,000/- per month. He points out that he has taken an insurance policy, and also Public Provident Fund account in the name of the minor child. Insofar as his income is concerned, he states that he is earning only Rs.40,000/- per month being the Managing Partner in a firm with the name and style of "Enercraft Power Solutions". Therefore, Mr.Bharath Kumar argues that as the husband is earning only Rs.40,000/- per month, he is not in a position to comply with the direction that has been given by the Court for paying Rs.25,000/- per month towards the child alone.

9. Per contra, Mr.Conscious Ilango, apart from relying upon the bills which I have referred to supra, argues that the child is suffering from a health issue known as "Allergic Rhinitis", which requires constant attention and medication. He urges that a sum of Rs.18,000/-, that is spent towards the football classes, is for the purpose of providing for an exercise so that the affliction which is affecting the child



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would be relieved. He further relies upon the proceedings in D.V.O.P.No.22 of 2021 on the file of the Mahila Court at Alandur and adds that the property in which the petitioner husband is currently residing belongs to the wife and on account of the fact that the flat is being occupied by the husband, the wife is not generating any income from the said property. He further points out that the Judicial Magistrate has ordered the husband to hand over possession of the flat to the wife and yet the husband is continuing in occupation.

10. I have carefully considered the submissions made by the learned counsel on either side.

11. For the purpose of disposal of the revision, I need not traverse beyond the scope of Section 26 of the Hindu Marriage Act. In terms of Section 26, it is the duty of the father to maintain the child. This position, which has been declared by the Parliament, has been accepted by the Supreme Court. The Supreme Court has held in **Rajnesh -vs- Neha and Others (2021) 2 SCC 324** that, it is the sacrosanct duty of the husband to maintain the wife and child. Insofar as the wife is concerned, she is employed in a multinational company and therefore has not sought for any maintenance towards herself. She only pleaded before the Court that the husband be directed to bear some financial burden which she has been bearing all these years.



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12. At this stage, Mr.Bharath Kumar states that the wife who is earning a very handsome salary of Rs.2,00,000/- a month should be in a position to bear the costs of upbringing of the child.

13. I have to take note of the fact that the child is now in the custody of the mother and the mother is obviously spending quality time and effort in order to upbringing the child. The said time which she is taking in upbringing the child, in case is quantified, would obviously exceed the sum of Rs.25,000/- which the Court has ordered.

14. With respect to the affidavit of assets and liabilities filed by the petitioner before this Court, I am not willing to take cognizance of the same for the simple reason, despite the opportunity being given to the husband by the learned Subordinate Judge at Alandur, he had not availed the said opportunity. Having left the bus go by at Alandur, he may not be in a position to board the same here at Parry's Corner.

15. The purpose of granting maintenance to a child is to ensure its upbringing, without having to suffer for any wants, on account of lack of financial support. If the father were to meet the educational expenses alone, it comes out to



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Rs.2,00,000/- per academic year. In addition, there are other expenses that the child incurs towards food, clothing and medicines. The learned trial Judge has taken a conservative view and has fixed a sum of Rs.25,000/- as interim maintenance for the child. In addition, I have to take note of the fact that the petitioner husband is in occupation of the flat which belongs to the respondent wife and obviously he is not paying any rent towards the same.

16. Taking into consideration the overall circumstances, especially in the light of the expenses that the respondent wife is incurring towards the maintenance of the child, I feel that the amount of Rs.25,000/- that has been fixed by the learned trial Judge is reasonable. I do not find it is arbitrary or capricious.

17. In the light of the above discussion, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.10.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The Subordinate Judge
Alandur.



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V. LAKSHMINARAYANAN, J.

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