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C.R.P. No.1293 and 1295 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.1293 and 1295 of 2022

and CMP.No.6894 and 6902 of 2022

CRP.No.1293 of 2022

K.N. Manivannan Sudhevan

S/o. Nallathambi

...Petitioner

Vs.

1. Sandhiya Priyadharshini

W/o. Manivanna Sudhevan

2. Minor Kirithine D/o. Manivanna Sudhevan

3. Minor Sathvika D/o. Manivanna Sudhevan

..... Respondents

PRAYER: Civil Revision Petitions are filed under section 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned Subordinate Judge, Dharapuram dated 01.04.2022 in I.A.No.924 of 2021 in O.S.No.190 of 2021.

For Petitioner : Mr.N. Manoharan

For Respondents : Mr. Ayyadurai, Senior Counsel,
for Mr. V. Balamurugan



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CRP.No.1295 of 2022

K.N. Manivannan Sudhevan
S/o. Nallathambi

...Petitioner

Vs.

Sandhiya Priyadharshini
W/o. Manivanna Sudhevan

..... Respondent

PRAYER: Civil Revision Petitions are filed under section 227 of the Constitution of India, to set aside the fair and decreetal order passed by the learned Subordinate Judge, Dharapuram dated 17.11.2021 in I.A. No.763 of 2021 in O.S.No.190 of 2021.

For Petitioner : Mr.N. Manoharan

For Respondents : Mr. Ayyadurai, Senior Counsel,
for Mr. V. Balamurugan

COMMON ORDER

The Civil Revision Petitions have been filed challenging the orders passed in I.A.No.924 of 2021 dated 01.04.2022 and in I.A. No.763 of 2021 dated 17.11.2021 in O.S.No.190 of 2021 on the file of Subordinate Court, Dharapuram, wherein the petitioner herein has filed petition in I.A. No.924 of 2021 to set aside the exparte order passed against him. In that application the Court has passed an order to pay a sum of Rs.24,000/- per month to the



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respondents towards interim maintenance till disposal of the Suit and the said amount has to be paid within the 5th day of Every English Calendar month and the petitioner shall pay the entire arrears from the date of filing of the Suit to the respondents by demand draft in favour of the 1st respondent on or before 19.04.2022 . The another petition in I.A. No.763 of 2021 filed by the petitioner seeking dismissal of the Suit with compensatory costs on the ground that it is barred by law, was rejected in *limine*. As against the said orders, the present Civil Revision Petitions have been filed.

2. According to the petitioner herein, he is the defendant in the main Suit and the respondents filed a Suit for maintenance as against the petitioner before the Trial Court. The 1st respondent is the wife of the petitioner and the 2nd and 3rd respondents are the children born to the petitioner and the 1st respondent. They filed the above Suit for maintenance. During the pendency of the Suit, the petitioner has filed the above petitions under Section 12, Order II Rule 2 of the Code of Civil Procedure respectively. While disposing the above said applications, the Trial Court passed *exparte* order and thereby the petitioner has filed petition to set aside the *exparte* order. In that order, without any prayer by the respondents for payment of interim maintenance, the Trial Court ordered interim maintenance and also there is no any



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application filed by the respondents for interim maintenance, but the Trial Court without any such application, while deciding the exparte set aside petition, passed an order to pay interim maintenance of Rs.24,000/- per month without any basis and thereby, the order passed by the Trial Court is liable to be set aside.

3. According to the respondents, the respondents have filed a Suit for the relief of payment of maintenance and the petitioner failed to maintain the respondents. In the main Suit, the petitioner herein has filed an application under Order II Rule 2 of Code of Civil Procedure and the same was dismissed on the same day. Since the petitioner has not filed the written statement, he was set exparte. Thereafter, the petitioner filed a petition to set aside the exparte order. In that application, the Trial Court taking into consideration the nature of the Suit, awarded an interim maintenance and the Trial court has passed a reasoned order and therefore, the present civil revision petitions are liable to be dismissed.

4. The learned counsel appearing for the petitioner would contend that the Trial Court passed a conditional order to pay interim maintenance to the respondents in the application filed by the petitioner under Rule IX Rule 7 of



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Code of Civil Procedure without any basis. The respondents not even either pleaded or argued for interim maintenance. But without any pleadings or any prayer, the Trial Court has granted interim maintenance in the application filed by the petitioner to set aside the exparte order. The petitioner has filed written statement along with the said petition. The order of the Trial Court in the absence of any pleadings by the respondents in respect of interim maintenance is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that since the main case has been filed for awarding maintenance, the Trial Court has correctly passed an order to pay interim maintenance and thereby, the order passed by the Trial Court is in order and the present petitions are liable to be dismissed.

6. This Court heard both sides and perused all the materials available on record.

7. It is an admitted fact that before the Trial Court, the petitioner has filed petition under Order IX Rule 7 of Code of Civil Procedure to set aside the exparte order passed against him. It is also admitted that the respondents



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have not pleaded in the counter in respect of interim maintenance and also they did not file any application to pay interim maintenance. The main Suit is filed for maintenance. While so, the Trial Court has passed order and while passing order in the application filed by the petitioner under Order IX Rule 7 of Code of Civil Procedure setting aside the exparte order, imposed condition to pay interim maintenance of Rs.24,000/- per month. The Trial Court has not even discussed about the entitlement of the parties for interim maintenance that too without any pleadings. The parties themselves have not sought for any interim maintenance, but the Trial Court without any basis imposed condition to pay interim maintenance. It is true that under IX Rule 7 of Code of Civil Procedure, the Court can pass conditional order, but at the same time, the Court cannot pass order to pay interim maintenance without any basis, while dealing the petition to set aside the exparte order.

7.1. The learned counsel appearing for the petitioner has relied upon judgment in ***Vijay Kumar Madan and others v. R.N. Gupta Technical Education Society and others reported in (2002) 5 Supreme Court Cases 30***, wherein the Hon'ble Supreme Court in Para no.7 has held as follows:-

7. Power in the Court to impose costs and to put the defendant-applicant on terms is spelled out from the expression "upon such terms as the Court directs as to costs or otherwise". It is settled with the decision of this Court in Arjun Singh v. Mahindra Kumar that on



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an adjourned hearing, in spite of the Court having proceeded ex parte earlier the defendant is entitled to appear and participate in the subsequent proceedings as of right. An application under Rule 7 is required to be made only if the defendant wishes the proceedings to be reflected back and reopen the proceedings from the date wherefrom they became ex parte so as to convert the ex parte hearings into bi-partite. While exercising power of putting the defendant on terms under Rule 7 the Court cannot pass an order which would have the effect of placing the defendant in a situation more worse off than what he would have been in if he had not applied under Rule 7. So also the conditions for taking benefit of the order should not be such as would have the effect of decreeing the suit itself. Similarly, the Court may not in the garb of exercising power of placing upon terms make an order which probably the Court may not have made in the Suit itself. As pointed out in the case of Arjun Singh the purpose of Rule 7 in its essence is to ensure the orderly conduct of the proceedings by penalizing improper dilatoriness calculated merely to prolong the litigation".

7.2. On a careful perusal of the judgment, it is clear that while exercising power to putting the defendant on terms cannot pass an order, which would have the effect of placing the defendant in a situation more worse off than what he would have been in if he had not applied under Order IX Rule 7 of Code of Civil Procedure. So also the conditions for taking benefit of the order should not be such as would have the effect of decreeing the Suit itself. In the case on hand also, the petitioner has filed a petition to set aside the ex parte order, but the Trial Court without any basis imposed condition to pay an interim maintenance without any pleadings or prayer by the respondents. Therefore, the order passed by the Trial Court is not in accordance with law , unsustainable and the same is liable to be set aside.

8. As far as the order passed in I.A. No.763 of 2021 is concerned,



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considering the nature of relief prayed in the application that the plea of barred by law has to be decided after full trial after adducing evidence and at this stage, it cannot be decided. The petitioner / defendant can take the said defence in the main Suit. The trial Court also, in this context, correctly dismissed the petition and the same is in order and does not require interference. In view of the said reasons, the revision petition is liable to be dismissed.

9. At this juncture, the learned counsel appearing for the respondents requested this Court to dispose the main Suit, since the case is pending for a long time. Considering the nature of Suit and the pendency for a long time, it is appropriate to direct the Trial Court to dispose the case within a stipulated time.

10. In view of the above discussion, the Civil Revision Petition in C.R.P. No.1295 of 2022 is dismissed and

10(i) the Civil Revision Petition in C.R.P. No.1293 of 2022 is allowed and the order passed by the learned Subordinate Judge, Dharapuram dated 01.04.2022 in I.A.No.924 of 2021 and dated 17.11.2021 is set aside and the I.A. No.924 of 2021 is allowed. The Trial Court is directed to dispose the main Suit within **4 (four) months** from the date of receipt of a copy of this



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order. No costs. Consequently, the connected miscellaneous petitions are closed.0+

24.06.2024

Index : Yes/No
Speaking order/non-speaking order
mjs

To
The Subordinate Judge, Dharapuram.

P.DHANABAL, J.,

mjs

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