



C.R.P.(PD).No.2097 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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S.Santhosh Kumar

.. Petitioner

Versus

Karkulali

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the Family Court, Cuddalore in I.A.No.221 of 2022, dated 03.02.2024.

For Petitioner : Mr.Ali Hassan Khan

For Respondent : Mr.P.Suresh Babu

ORDER

This Civil Revision Petition is at the instance of the husband. The respondent is the wife. For the sake of convenience, the parties shall be referred to as the husband and wife.



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2. The petitioner/husband solemnized his marriage with the respondent on 24.08.2015. From the wedlock, a child was born on 08.07.2016. Due to disputes and differences, the parties separated on 20.11.2019. The husband filed a petition for restitution of conjugal rights which came to be dismissed for default on 05.11.2020. Thereafter, the parties filed police complaints before the All Women Police Station, Cuddalore. That not bearing fruit, the husband presented H.M.O.P.No.334 of 2021 seeking for divorce on the grounds of cruelty before the Family Court at Cuddalore.

3. The wife entered appearance and filed a detailed counter-affidavit. Simultaneously, she took out an application for interim maintenance for herself and her child. This application was received in I.A.No.221 of 2022. The husband filed a detailed counter-affidavit. Both the parties did not file their affidavit of assets and liabilities as directed by the Supreme Court of India in ***Rajnesh Vs. Neha and Anr., (2021) 2 SCC 324***. Being left with no other option, the learned Family Judge at Cuddalore took up the application for disposal.



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4. The husband and wife represented by their Counsels, made their respective submissions. The wife filed Ex.P1 to Ex.P4. On the basis of the submissions made by the Counsels and on the basis of the records, the learned Trial Judge came to the conclusion that the husband should pay a sum of Rs.50,000/- per month as interim maintenance for the wife and the child. Aggrieved by the same, the present Civil Revision Petition has arisen before this Court.

5. At the time of admission, this Court, while issuing notice, directed the respondent to pay 1/3 rd of the amount of arrears. Pending the proceedings, the husband paid a sum of Rs.1,41,666/- on 25.09.2024 and the remaining amount of Rs.4,95,000/- was paid thereafter. Once the interim order had been complied, I took up the revision for final disposal.

6. Heard Mr.Ali Hassan Khan, learned Counsel for the civil revision petitioner and Mr.P.Suresh Babu, learned Counsel for the respondent.

7. Mr.Ali Hassan Khan states that as the parties did not file their affidavit of assets and liabilities, the matter deserves a remand. To that end,



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he places reliance upon a judgment of the Supreme Court in ***Aditi Alias Mithi Vs. Jitesh Sharma, 2023 SCC OnLine SC 1451***. Mr.Ali Hassan Khan urges that the wife has independent source of income as she is qualified to be a lawyer. He then points out that the wife did not produce any evidence before the Family Court to substantiate that her husband is incurring expenses of Rs.1,00,000/- per month. In addition, he argues that while the wife is demanding maintenance from him, she is not permitting him to see his child.

8. Per *contra*, Mr.P.Suresh Babu draws my attention to the counter-affidavit filed by the wife in H.M.O.P.No.334 of 2021 to point out that soon after the marriage, the husband and his family members insisted that the wife should stop her practice. Consequently, she stopped practicing in the year 2015 and by the lapse of time, her entire clientele have faded away.

9. With respect to the quantum, Mr.P.Suresh Babu states that the husband's father is a former Member of Legislative Assembly in the state of Tamil Nadu and the family is running a CBSE institution in Cuddalore. He



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states that the maintenance has to be fixed with regard to the status that is occupied by the family, to which, the wife is married.

10. He, then, turns to the records that were filed Mr.Ali Hassan Khan namely, the income-tax returns for the Assessment Year 2021-2022 to the Assessment Year 2024-2025 and states that all these returns were filed after the Civil Revision Petition had been filed before this Court. Therefore, Mr.P.Suresh Babu vehemently contends that none of these records should be looked into as they were prepared for the purpose of the case.

11. In response, Mr.Ali Hassan Khan points out that the wife did not produce any expenses for the child in order to demand monthly maintenance of Rs.25,000/- for her.

12. I have carefully considered the submissions of both the sides and have gone through the records.

13. It is not in dispute that the husband belongs to a well-known family in the town of Cuddalore. His father is a former Member of



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Legislative Assembly in the state of Tamil Nadu. In addition, the family of the husband is managing a school established by their family trust in the town of Cuddalore.

14. With respect to the first point that is raised by Mr.Ali Hassan Khan, on the non-filing of the affidavit of assets and liabilities, I have to point out that despite several opportunities granted to the husband by the Trial Court, he did not avail of the said opportunities. Having failed to avail the said opportunities, it does not lie in the mouth of the husband to plead as he did not file the affidavit of assets and liabilities, he is entitled for an order of remand.

15. It is a settled position of law that a person cannot take advantage of his own fault. If I were to accede to the request made by Mr.Ali Hassan Khan, then, in a maintenance proceedings, a husband will not comply with the directions given by the Supreme Court in **Rajnesh**'s case (cited *supra*) and suffer an order and thereafter, come before the High Court and plead that since he did not file the affidavit of assets, the Court below should not take the application for disposal.



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16. A reading of Section 24 of the Hindu Marriage Act, 1955 makes it clear that where a wife is unable to maintain herself, she can take out an application for interim maintenance. In the very judgment referred to above, the Supreme Court held that it is the sacrosanct duty of the husband to maintain his wife and child. For the very fact that the wife is capable of generating income, it does not mean that a Court cannot order maintenance. Furthermore, in this case, the wife specifically pleaded that the family of the husband insisted that she should stop her practice soon after the marriage. When a lawyer goes out of practice, whether she suspends her practice or not, the clientele is not going to wait till she is ready to resume her practice. If an Advocate stops practicing, the clients will vanish faster than the morning dew in the Sahara desert. Therefore, the plea that the affidavit of assets and liabilities was not filed and the wife is capable of generating income does not appeal to me.

17. Insofar as the quantum is concerned, I started this judgment pointing out that the family of the husband is one of the preeminent families in the town of Cuddalore. As to how maintenance should be ordered, was



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settled by the Delhi High Court in ***Bharat Hegde Vs. Saroj Hegde, 2007***

SCC OnLine Del 622. The Delhi High Court held that a party is entitled to be maintained in the same status as she would have been in case she had continued to reside in the matrimonial home. When the family of the civil revision petitioner is holding a preeminent status in the society, the quantum of the maintenance that is fixed should also be in the same state.

18. To a certain extent, I have to agree with the submission of Mr.Ali Hassan Khan that the wife did not produce any evidence in order to prove that she is expending a sum of Rs.1,00,000/- per month. Perhaps, that is the reason why the Court did not allow the application as prayed for, but, ordered interim maintenance of Rs.50,000/-. At this stage, Mr.Ali Hassan Khan refers to the income-tax records that were filed along with the typed set of papers. As rightly contended by Mr.P.Suresh Babu, all these records have come into being pending the Civil Revision Petition. Furthermore, what has been produced is only the income-tax returns filed by the husband. The final order of assessment that would be passed by the Income Tax Department, has not been produced before the Court.



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19. Even with respect to the returns that are produced,

(i) the filing for the Assessment Year 2021-2022 is on 26.03.2024;

(ii) the filing for the Assessment Year 2022-2023 is on 27.03.2024;

(iii) the filing for the Assessment Year 2023-2024 is on 29.03.2024.

It is only the assessment for the Financial Year 2024-2025 that has been filed on time on 28.07.2024. It seems that the husband maintained his record of default in payments to the wife even to the Income Tax Department. As all these income-tax records have come in pending the litigation, I am persuaded to accept the submission of Mr.P.Suresh Babu that no reliance can be placed upon the same.

20. In fact, the wife produced the business card of the husband to substantiate that he is working as an Executive Director of a Company styled Sudhakar Chemicals (P) Ltd., situated at SIPCOT Industrial Complex, Cuddalore-607 005. She has also pointed out that the husband is a proprietor of Sri Krishna Sai Polymers at Kattukuppam at Puducherry. Apart from a bold denial of the statement, the husband is not able to state as to how, when he represented his wife in the year 2015, that he was a



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Director in Sudhakar Chemicals (P) Ltd., today, he pleads that he is absolutely unemployed.

21. Mr.Ali Hassan Khan invites my attention to a certificate that was issued by one Mr.V.Srinivasan, practicing Company Secretary to state that the husband is not even a shareholder in Sudhakar Chemicals (P) Ltd., and therefore, this would substantiate his case that he has nothing to do with the said institution. A perusal of the affidavit shows that the wife did not allege that the husband is a shareholder. Per *contra*, she pleaded that he is an Executive Director of the institution. In addition, the certificate of the practicing Company Secretary, referred to by Mr.Ali Hassan Khan, was issued on 04.04.2024, that too is a certificate which came in after this Civil Revision Petition has commenced, it only lists out the shareholders. It does not state as to who are the directors.

22. One point that is urged by Mr.Ali Hassan Khan deserves acceptance. He points out that the child is aged about 7 years and it would not be possible for the child to spend a sum of Rs.25,000/- per month. Taking that aspect into consideration, at the same time considering the



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status of the parties, I am inclined to modify the order passed by the Family Court, Cuddalore. The amount of Rs.25,000/- granted to the child is reduced to Rs.20,000/- per month, by reducing a sum of Rs.5,000/-.

23. Mr.Ali Hassan Khan states that the wife is not permitting the husband to see the child. Mr.P.Suresh Babu refutes this statement and states that the husband never made an attempt to come and see the child. Be that as it may, since Mr.P.Suresh Babu has agreed that the husband can visit the child and since the residence of the wife is at Bagoor, there shall be a direction to the wife to permit the husband to visit the child and spend some quality time with her on the second and fourth Sundays of every month between 10.00 A.M to 1.00 P.M.

24. If the arrears, being calculated at the rate of Rs.45,000/- per month, are cleared by the husband, less the amount of Rs.5,16,666/- paid pending the Civil Revision Petition, the learned Family Judge, Cuddalore is requested to take up the Original Petition for final disposal. The learned Family Judge will note that, this being an order of maintenance, if the husband defaults even for one month, he should not be permitted to



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continue with the proceedings further. If the default continues, despite an intimation to the husband regarding the default, the learned Trial Judge is free to dismiss H.M.O.P.No.334 of 2021. However, if the husband clears all the arrears and continues to pay the amount of Rs.45,000/- fixed by this order, the Family Court shall take up H.M.O.P.No.334 of 2021 for disposal and shall conclude the proceedings on or before 30.04.2025.

25. With the above modification, this Civil Revision Petition stands disposed of. No costs.

19.10.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs

To

The Family Court,
Cuddalore.



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V.LAKSHMINARAYANAN, J.

grs

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