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C.R.P.No.2298 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2298 of 2023
and C.M.P.No.13945 of 2023

1.Sathish
2.Muthukumaran
3.Rajam

... Petitioners

-Vs-

Thenmozhi

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to call for the entire records relating to the order dated 27.02.2023 passed by the learned District and Sessions Judge at Nagapattinam in CA No.2/2021 confirming the order dated 05.12.2020 passed by the learned Additional Mahila Judicial Magistrate, Nagapattinam in DVC No.64 of 2019 and to set aside the same.

For Petitioner : Ms.S.Thamizh Poonkuilmozhi
For Respondent : Mr.M.Govindaraju

ORDER

This Civil Revision Petition arises against the order passed by the learned Principal District and Sessions Judge at Nagapattinam in C.A.No.2 of 2021 in confirming the judgment and order of the learned Additional Mahila Court-cum-Judicial Magistrate Court at Nagapattinam in D.V.C.No.64 of 2019. By way of an order dated 05.12.2020, the learned Additional Mahila Court-cum-Judicial Magistrate



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granted a protection order to the respondent wife in terms of Section 18 of the Protection of Women from Domestic Violence Act. In addition, she also stated that the civil revision petitioners should pay an amount of Rs.5000/- as monthly rent for the wife in case they do not provide her with a residence. The learned Judicial Magistrate also directed return of property viz., gold jewels, silver utensils and Sthridhana articles of the respondent wife to her and finally had ordered maintenance of Rs.4,000/- per month to the wife under Section 19 of the Protection of Women from Domestic Violence Act, Rs.3,000/- per month for the child and a further sum of Rs.3,000/- per month towards medical expenses. Under Section 22, the Court ordered compensation of Rs.5,00,000/- to the respondent wife.

2. Aggrieved by the said order passed by the learned Judicial Magistrate, an appeal was preferred to the learned Principal District and Sessions Judge at Nagapattinam. The said appeal has been dismissed, against which the present revision.

3. The undisputed facts of the case are the sole respondent and the first petitioner entered into matrimony on 08.12.2015. From the wedlock, a female child was born and she is under the custody of the mother. It is the case of the wife that at the time of marriage, 35 sovereigns of gold, 1/2 Kg of silver and sum of Rs.4,00,000/- by way of cash had been paid by her father to the first petitioner. The allegation of the husband is that the respondent wife is unfit for matrimonial



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relationship as she is mentally unsound. He would further state that she is taking treatment from one Dr.Kannapiran who is situated at Tiruvarur. The husband would further plead that alleging cruelty, he has initiated proceedings in HMOP No.26 of 2017 on the file of the Subordinate Judge at Mannargudi. At this stage, the learned counsel for the respondent wife would submit that she has also initiated proceedings seeking restitution of conjugal rights in HMOP No.72 of 2018 pending on the file of the Subordinate Judge at Nagapattinam.

4. Before the learned Judicial Magistrate, the respondent wife entered the witness box and she deposed as P.W.1. Petitioners 1 to 3 were given sufficient opportunity to cross examine P.W.1 and they also availed the same. The learned Judicial Magistrate came to the conclusion that she did on the ground of the positive evidence that has been let in by the respondent wife and the lack of evidence, either oral or documentary at the instance of the husband.

5. Ms.S.Thamizh Poonkuilmozhi learned counsel for the civil revision petitioners would submit that since the husband has not entered the witness box, the order has to be set aside and a fresh opportunity should be given to the parties.

6. The Court had afforded opportunity to the respondents to let in evidence. They did not avail of the said opportunity. If a party who has been given an opportunity does not avail that opportunity at the appropriate time, in my view, he



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cannot come before the revisional Court and plead that as he had missed the opportunity to let in evidence, that is a ground to set aside the order in favour of the wife. If the plea of Ms.Thamizh Poonkuilmozhi is accepted, then every husband will avoid the witness box before the Magistrate and then would come before the appellate or revisional Court to plead that he has not availed an opportunity to let in evidence and on that ground seek an order has to be set aside. If I were to accept such a plea, it would result in travesty of justice and a hapless lady who has been knocking at the doors of the Court for getting maintenance and protection order will be thrown at the mercy of the husband. I am not convinced with the submission of the learned counsel for the petitioners that as the husband has not availed the opportunity, he should be given another opportunity to let in evidence. A perusal of the DVC proceedings shows that sufficient opportunity had been granted to the husband and he failed to avail the same.

7. That argument going against the petitioners, the learned counsel would come up with another argument that the husband is working as hardware engineer and is hardly eking out his livelihood at Rs.10,000/- per month. Insofar as the aspect of maintenance is concerned, it has been settled by a catena of decisions that a wife is entitled to be maintained at the same status as she would have been if not for the divorce proceedings having been initiated. To put it in other words, the wife is entitled to be maintained as if she has been living in the matrimonial home. In order to state that the husband is earning only Rs.10,000/- per month, as



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pointed out in the previous paragraph, the husband has failed to prove it. He should have entered the witness box and marked at least his income tax certificate or other such certificate which will have a bearing on his income in order to state that he is earning only Rs.10,000/- per month. As there is no evidence, the learned Judge has taken a very reasonable value of Rs.4000/- towards maintenance of the wife and Rs.3000/- towards the maintenance of the daughter. Cumulatively it will come to around Rs.220/- per day. This amount is hardly sufficient for a person to have an existence, let alone an existence on par with her status as the wife of the first civil revision petitioner. The amount not being excessive, I find no reason to differ from the amount fixed by the learned trial Judge.

8. Insofar as the medical expenditure is concerned, an amount of Rs.3000/- has been fixed to be paid by the husband to the wife every month. This too I do not find unreasonable.

9. A wife is entitled for a residence order in terms of Section 19(6) of the Protection of Women from Domestic Violence Act. The husband can either provide her with a residence and in case he does not provide her with a residence, he must pay such an amount as would be equivalent to taking a property on rent. The petitioners and the respondent are residing in the moffusil area and the amount that is fixed for rent viz., Rs.5000/- is not excessive in my view.



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10. In fact, in terms of Section 3 of the Protection of Women from Domestic Violence Act, even an economic abuse would be covered in terms of domestic violence. Non-payment of maintenance to the wife and child and not providing her with a residence are indications of economic abuse. In the light of the above discussion, I do not find any reason to interfere with the order passed by the Courts below. The scope of revision is only in terms of supervisory jurisdiction. Nonetheless, since Ms.Thamizh Poonkuilmozhi had urged the matter on merits, in order to satisfy myself I had gone through the evidence let in before both the Courts below as well as through the orders. I do not find them either perverse or arbitrary. Unless and until the orders are perverse or arbitrary they are not susceptible to be interfered with under Article 227 of the Constitution of India.

11. In terms of **Rajnesh -vs- Neha and Others (2021) 2 SCC 324**, the petitioner wife will be entitled to maintenance from the date of filing of the domestic violence petition before the learned Additional Mahila-cum-Judicial Magistrate at Nagapattinam. The Civil Revision Petition is dismissed with costs. Consequently, connected miscellaneous petition is also dismissed.

18.06.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The District and Sessions Judge, Nagapattinam.

2.The Additional Mahila-cum-Judicial Magistrate, Nagapattinam.



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V. LAKSHMINARAYANAN, J.

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