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C.R.P.No.2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2935 of 2024

Mr.Philip Clamant
S/o Mr.A.Soosairaj

.. Petitioner

-VS-

Mrs.Esther Mary
D/o Sebastian Arputharaj

.. Respondent

Memorandum of Grounds of Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 02.02.2024 passed by the Additional Principal Family Court at Coimbatore in I.A.No.1 of 2023 in I.D.O.P.No.1784 of 2022.

For Petitioner :: Mr.N.Senthilvel Selvakumar

For Respondent :: No appearance

ORDER

This civil revision petition arises against the order passed by the Additional Principal Family Court at Coimbatore in I.A.1 of 2023 in I.D.O.P.No.1784 of 2022 dated 02.02.2024.



2. The husband is the civil revision petitioner. He married the respondent on 17.02.2019. Even at the time of marriage, he was working in the Fisheries Department of Government of Tamil Nadu. The respondent-wife was then working as a teacher in a private school. She resigned the same in order to join the petitioner in matrimony.

3. Due to disputes and differences, the husband and wife separated. I.D.O.P.No.1784 of 2022 was initiated by invoking the provisions of Section 10 of the Indian Divorce Act of 1869. After the petitioner was served with the summons, the wife took out an application for interim maintenance as per Section 36 of the Indian Divorce Act. She pleaded that she is entitled to a sum of Rs.42,000/- per month towards interim maintenance. She pleaded that she is not able to maintain herself from the meagre income of Rs.16,000/- that she is getting as a teacher in Nehru International Private School.

4. The petitioner filed a counter. He accepted the fact that he is working in the Government and is drawing a monthly salary of Rs.67,715/-. He would plead that he is suffering from cancer and therefore requires this amount for his treatment. He would further add that he is proposing to study further, for which purpose he is saving money. Apart from that, he would state that his unmarried sister is staying with him & he has to



make facilities for her marriage also. He would plead that he has raised loans from third parties, which he is servicing month on month.

5. The learned trial Judge considered the issues and came to a conclusion that a sum of Rs.10,000/- per month would be reasonable for the husband to pay as interim maintenance. Hence, the revision.

6. Heard Mr.Senthilvel Selvakumar for the civil revision petitioner. Mr.Selvakumar would submit that though the husband is getting a gross income of Rs.75,394/-, after deductions and after payment of monthly instalments towards loans, he still has to spend a substantial amount towards cancer treatment. He would plead the amount granted by the Court, has not taken into consideration the fact that the wife is generating income from her employment as a teacher.

7. I have carefully considered the submissions of Mr.Selvakumar.

8. The scope of revision under Article 227 as against an order of interim maintenance is not as wide as in an appeal. The Court can interfere where the trial Court has come to a conclusion, not based on any material before it or if it has ordered



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maintenance which is exorbitant or excessive. Furthermore, the principle of law regarding interim maintenance is that the wife is entitled to be maintained at the same status as she would have been if continued in the matrimonial home. It is not in dispute that the civil revision petitioner is a Government servant employed in Fisheries Department of the Government of Tamil Nadu. Though he has a gross income of Rs.75,394/-, his affidavit of assets discloses that his net salary is Rs.67,715/-. A sum of Rs.10,000/- paid towards the wife is less than one-sixth of the salary which he is getting. Hence, I cannot treat it as excessive. For the mere fact that the petitioner is in the good books of his creditors, does not mean that he should not be on the same book of his wife also. The wife is entitled to be maintained, as pointed out above, in the same status as she would have been if she was actually living with him. I am sure if the wife had lived with the civil revision petitioner, he would have spent more than Rs.10,000/- on her. The points raised by Mr.Selvakumar failing, I am not in a position to come to the rescue of the civil revision petitioner. The civil revision petition is dismissed. No costs.

Index: yes/no

03.09.2024

Neutral citation : yes/no

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1. The Additional Principal Judge
Additional Principal Family Court
Coimbatore



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V.LAKSHMINARAYANAN, J.

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