



C.R.P.No.1974 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1974 of 2024 and
C.M.P.No.10456 of 2024

1.Aneesh Alagan (Minor)

2.Aishwarya.S

W/o.Major (Retd) Dr.Aravinthan.M,
Aged about 30 years,
(1st Petitioner represented by his
mother as natural guardian 2nd petitioner),
Both are residing at No.14/18,
Lotus Ramaswamy Street, Royapuram,
Chennai-600 013.

... Petitioners

Vs.

Major (Retd) Dr.Aravinthan.M

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set-aside the order and decretal order dated 22.02.2024 passed in I.A.No.2 of 2023 in I.A.No.1 of 2022 in F.C.O.P.No.4906 of 2019 and consequently, allow the application filed by the Revision Petitioners thereby restoring I.A.No.1 of 2022 in F.C.O.P.No.4906 of 2019 on the file of the IV Additional Family Court at Chennai.

For Petitioners : Mr.Anish Gopi
For Respondent : Mr.G.Senthil Kumar

ORDER



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The petitioners are the minor son and estranged wife of the respondent respectively. The 2nd petitioner filed I.A.No.1 of 2022 in O.P.No.4906 of 2019 claiming interim maintenance for the 1st petitioner, her minor son from the respondent and the petitioner also filed assets and liabilities of the respondent. The respondent expressed his inability to pay maintenance to the 1st petitioner/minor son and failed to file affidavit declaring the assets and liabilities. On 04.11.2022, when the interim maintenance petition in I.A.No.1 of 2022 in O.P.No.4906 of 2019 listed for hearing, the petitioner could not appear since her child fell in sick and she had to take care. The petitioner informed her Counsel about the same who informed the Court, but the Family Court on 04.11.2022 dismissed I.A.No.1 of 2022 in O.P.No.4906 of 2019 for default. To restore the same, the petitioner filed I.A.No.2 of 2023 in I.A.No.1 of 2022 in O.P.No.4906 of 2019 along with documents to show that the 1st petitioner's ill-health and the 2nd petitioner's non appearance on that day were bonafide. The Family Court by order, dated 22.02.2024 dismissed I.A.No.2 of 2023 in I.A.No.1 of 2022 in O.P.No.4906 of 2019. Challenging the same, the present civil revision petition has been filed.



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2.The learned counsel for the petitioners submitted that the marriage between the 2nd petitioner and the respondent took place on 11.11.2018 and out of their wedlock, the 1st petitioner born to them on 03.02.2020. The 1st petitioner was ill-treated and subjected to cruelty and she was chased out from the matrimonial home. Considering the 1st petitioner's welfare, the 2nd petitioner condoned the act of respondent and filed O.P.No.4442 of 2019 seeking restitution of conjugal rights and the respondent filed O.P.No.4906 of 2019 for dissolution of marriage and divorce. During the pendency of the divorce petition, the petitioners filed I.A.No.1 of 2022 claiming interim maintenance which came to be dismissed for non-prosecution on 04.11.2022. Then they filed restoration petition in I.A.No.2 of 2023 which was also dismissed on 22.02.2024. He further submitted that the petitioners were neglected by the respondent and no maintenance amount paid so far. The objection by the respondent is that set aside petition ought to have been filed within thirty days but it was filed with a delay of 347 days without condonation of delay petition. The substantial justice would be rendered only if the maintenance petition in I.A.No.1 of 2022 is restored. Now the



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Family Court is proceeding with O.P.No.4906 of 2019 in hurried manner and the respondent somehow wants to complete proceedings and thereby, deny the petitioner and interim maintenance. Hence, the learned counsel prays for appropriate direction.

3.The learned counsel for the respondent submitted that though the petitioner filed restitution of conjugal rights petition, she had no inclination to join the respondent to continue matrimonial life. On the other hand, using minor son/1st respondent as tool, the 2nd petitioner filed interim maintenance petition and harassed the petitioner. The respondent filed divorce petition in O.P.No.4906 of 2019 on the ground of cruelty and it is pending from the year 2019. The petitioners is dragging on the proceedings by giving one reason or other. Now, the case is at the advance stage and the proceedings in O.P.No.4906 of 2019 itself can be completed within a short period.

4.Both the learned counsel for the petitioner and the learned counsel for the respondent agreed that the proceedings in O.P.No.4906 of 2019 can



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be completed within a period of six months.

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5.Considering the submissions and on perusal of the materials, it is seen that now both the petitioner and the respondent have come to understanding that they are willing to complete the proceedings in O.P.No.4906 of 2019.

6.In view of the above, this Court directs the learned IV Additional Principal Judge, IV Additional Principal Family Court at Chennai to complete the trial in O.P.No.4906 of 2019 within a period of six months from the date of receipt of a copy of this order.

7.As regards the dismissal of I.A.No.1 of 2022 is concerned, on perusal of the materials produced, this Court condones the delay. In view of the same, the order passed in I.A.No.2 of 2023, dated 22.02.2024 and the order passed in I.A.No.1 of 2022, dated 04.11.2022 are hereby set aside.

8.In the result, this civil revision petition is allowed. Consequently,



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connected civil miscellaneous petition is closed. No costs.

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Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes

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To

The IV Additional Principal Judge,
IV Additional Principal Family Court at Chennai.



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M.NIRMAL KUMAR, J.

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