



C.R.P.(PD) No.1867 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.1867 of 2023
& C.M.P.No.11975 of 2023

Lakshmi Narassimhan

.. Petitioner

Versus

R.Bhooma Amirthavalli

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 13.04.2023 in I.A.No.45 of 2019 in HMOP No.95 of 2018 on the file of the Subordinate Judge, Arani, at Thiruvannamalai District.

For Petitioner : Mr.N.Srinivasa Raghavan

For Respondent : Mr.K.S.Navin Balaji

ORDER

This civil revision petition challenges the order of the learned Subordinate Judge at Arani, Thiruvannamalai District in I.A.No.45 of 2019 in HMOP No.95 of 2018.



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2. For the sake of convenience, the parties will be referred to as husband and wife.

3. HMOP No.95 of 2018 was originally presented before the III Additional Family Court at Chennai. Pursuant to the orders passed by this Court in Tr.CMP.No.1340 of 2022 dated 02.01.2023, the proceedings were withdrawn from the Family Court, Chennai and transferred to the file of the Subordinate Court at Arani. Thereafter, the HMOP was re-numbered as HMOP No.95 of 2018.

4. HMOP No.95 of 2018 seeks divorce on the grounds of cruelty. The petitioner married the respondent on 25.10.2007 at Chennai as per Hindu rites and customs. From the wedlock, a child was born to the couple. The child is in the custody of the mother. On account of disputes and differences, the parties have separated. Alleging cruelty, the petitioner has filed the above said HMOP.



5. Pending the litigation, the wife took out an application for interim maintenance in I.A.No.45 of 2019. Originally, the application had been filed before the Family Court and subsequently, it was given the aforesaid number on its transfer to the Subordinate Court at Arani. The wife pleaded that she is unable to maintain herself and her child. She pointed out that the child is studying at Mother Therasa Matriculation School at Arani. On the date the petition was filed, the child was in LKG and today she is said to be XI Standard.

6. She pleaded her husband is working as a Senior Manager in an institution at Bangalore and that he is drawing a salary of Rs.1 lakh per month. It was also pointed out that this is the second round of litigation for the parties. Previously, a petition had been filed for restitution of conjugal rights. It was dismissed, only to be reversed by the learned District Judge at Tiruvannamalai in CMA.No.2 of 2011. She pointed out that there are recurring expenses for herself and her child in the form of medicines, food, clothing, etc. In addition, since the child is suffering from visual difficulties, she needs to be treated at a private eye care clinic, which also incurs lot of



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expenses. She further pointed out, since she has to undertake travel from Arani to Chennai, she is incurring travelling expenses also. Therefore, she sought for a sum of Rs.50,000/- towards interim maintenance.

7. The civil revision petitioner/husband filed a detailed counter opposing the application. He chose to make averments on the merits of the case. He pointed out that the fact that he possesses paternal or maternal wealth is irrelevant at the time of fixation of maintenance. He added that none of these properties are standing in his name and therefore, he is not liable to pay any amount. While he denied that he is earning Rs.1 lakh per month, curiously enough, he did not disclose the amount that he is generating every month. The pleading becomes curiouser, as he stated without the undisclosed income, he has to take care of his food, fuel, expenses of his parents, laundry bills and to take care of the loans that had been incurred to get his two sisters' married. On these pleadings, he sought for dismissal of the petition.



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8. The learned Trial Judge, after appreciation of the affidavit and counter, came to a conclusion that a sum of Rs.20,000/- per month, for maintenance of the wife and child, would be in the interest of justice. Accordingly, he allowed the application. Aggrieved by the same, the husband is on revision before me.

9. I heard Mr.N.Srinivasa Raghavan for the civil revision petitioner and Mr.K.S.Navin Balaji for the respondent.

10. Mr.Srinivasa Raghavan submits that the petitioner was employed in Bangalore, but as on today, he is unemployed. On account of continuing harassment that the husband faced at the hands of the wife, they separated. He pleads being unemployed, he is living on the doles that is given to him by his parents and therefore, the order of the learned Trial Judge requires to be revised.

11. Per contra, Mr. Navin Balaji states that the husband requires no indulgence, since he has not paid the amounts as directed by this Court. He



points out that every year, she is incurring a sum of Rs.72,000/- towards the educational expenses of the child. He points out that with very great difficulty, the wife is attempting to bring up the child and the husband had not spent a single paisa towards upbringing of his child. In response, Mr.Srinivasa Raghavan states that the wife is employed in an institution at Teynampet and that the husband is willing to take care of the child and also pay for her expenses.

12. I have carefully considered the submissions of both sides.

13. At the outset, I should point out that though the wife pleads, the husband is generating an income of Rs.1 lakh, no evidence has been produced before the Court. At the same time, I should also point out that while the husband has filed a counter running into several pages, there is not even a single sentence disclosing as the income he is generating. Though he is not generating any income, as been from the counter, he pleads he is able to take care of his personal expenses, servicing loans that he had incurred loans for his sisters' marriage, as well as, provide for food & clothing for his



parents and himself. This shows that the civil revision petitioner is not denuded of any income. The counter also does not deny the fact that his family possesses properties. The counter only states that while the family possesses properties, those properties do not stand in the name of the civil revision petitioner. In other words, the counter though precise, is as evasive as it could be, on material facts.

14. In ***Rajnesh v. Neha, 2021 2 SCC 324***, the Supreme Court held that it was the sacrosanct duty of the husband to maintain his wife and child. If that be in the position, irrespective of whether the husband is generating income or not, it is his duty to maintain his wife and child. The performance of this duty does not depend upon the ability of the husband to earn. I would only have to look at the situation how the husband is placed when I come to the issue of quantum. It is not in dispute that the husband was working in a senior managerial level in an institution. As held by the Supreme Court in ***Dr.Rajiv Varghese v. Rose Chakkramankkil Francis, 2024 SCC OnLine SC 3367***, it is the duty of the Court, while fixing the quantum of maintenance, to consider the status of the parties and ensure that the wife



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receives amount towards maintenance, which is equivalent to the amount that the husband would have spent on his wife and child, in case, they continued to live in the matrimonial home.

15. Even if I were to take that the husband was only generating a sum of Rs.80,000/-, the Trial Judge, in my opinion, has taken a conservative view and has fixed a sum of Rs.10,000/- per head for the wife and child. Rs.10,000/- per head works out to less than Rs.300/- per day. This cannot be said to be excessive nor arbitrary. Unless and until, the amount is shockingly disproportionate, this Court seldom interferes with such orders in the exercise of powers under Article 227 of the Constitution of India. The amount of not being Rs.20,000/- for the wife and child, who is now studying in secondary school, cannot be treated to be excessive. The learned Trial Judge has applied the correct principles of law to the facts of the case and has come to the conclusion that an amount of Rs.20,000/-, would serve the interest of justice. I do not find any reason to interfere.



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16. I notice that the learned Trial Judge, while allowing the application, has not fixed the date from which the husband would be liable to pay the maintenance amount. As pointed out above, the maintenance application had been filed before the learned Family Court, Chennai, as early as in the year 2014 and it had been numbered as I.A.No.1076 of 2014. The jurat portion of the affidavit shows that it had been presented in January 2015. Therefore, the liability of the husband to pay Rs.20,000/- per month to his wife and child would commence from January, 2015 till the disposal of the HMOP No.95 of 2018.

17. Mr.Navin Balaji states that he has taken out an application to ensure that the husband pays the arrears amount as well as monthly amount of maintenance. He adds it had been adjourned since this civil revision petition is pending. Now that this revision is dismissed, the said inhibition for the Court to proceed further with the application does not exist.

1. In fine, with the modification on the date from which the husband's liability to pay the maintenance arises



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2. , this Civil Revision Petition is dismissed. The civil revision petitioner is granted eight weeks time to clear the arrears. Learned Trial Judge shall adjourn the application filed by the wife to enforce the order of maintenance by a period of **eight weeks** to enable the husband to clear the arrears. No costs. Consequently, the connected miscellaneous petition is closed.

12.12.2024

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

The Subordinate Court,
Arani, Thiruvannamalai District.



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V.LAKSHMINARAYANAN, J.

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