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C.R.P. No. 2483 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 2483 of 2024

and

C.M.P. No. 13125 of 2024

Dinesh Kumar ... Petitioner / Petitioner / Respondent

Vs.

Amritavarshini ... Respondent / Respondent / Petitioner

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.12.2023 passed by the Family Court at Villupuram in I.A. No. 417 of 2023 in H.M.O.P. No. 34 of 2022.

For Petitioner : Mr. R.Srinivas
Assisted by Ms. V.Mythili

For Respondent : Mr. R.Swarnavel

ORDER

The civil revision petition arises against the order passed by the learned Family Court at Villupuram in I.A. No. 417 of 2023 in H.M.O.P. No. 34 of 2022 dated 20.12.2023.

2. H.M.O.P. No. 34 of 2022 has been filed by the husband before the



Family Court at Villupuram for the purpose of divorce invoking Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955. There is no dispute in the relationship. The petitioner married the respondent on 10.03.2019 at Villupuram. From the wedlock, a female child was born on 25.01.2020. The child is under the custody of the respondent. Due to disputes and differences, the parties on their return from Canada have separated. The wife has gone back to her native place at Mysore. Since she did not rejoin her husband, the petition for divorce came to be presented.

3. Pending the proceedings, the wife filed an application under Section 24 of the Act seeking for maintenance for herself. The said application came to be partly allowed directing the payment of Rs.25,000/- to her. This order in I.A. No. 638 of 2022 in H.M.O.P. 34 of 2022 dated 04.07.2023 was challenged before this Court in C.M.A. No. 2147 of 2023. This Court refused to accept the appeal and dismissed it on 11.09.2023.

4. Soon thereafter, the wife filed an application invoking Section 26 of the Hindu Marriage Act pleading that as she is maintaining the child all alone, and that the husband will have to pay a sum of Rs. 30,000/- for interim maintenance for the minor.

5. The learned Judge issued notice in the application and received a counter and thereafter fixed a sum of Rs. 15,000/- per month as maintenance.



Challenging the same, the present civil revision petition.

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6. Heard Mr. R.Srinivas for Mrs. V.Mythili for the civil revision petitioner and Mr. R.Swarnavel for the respondent.

7. Mr. R.Srinivas would submit that the petitioner is without any employment. He had quit his employment in Canada and had come back to India. He would state that the civil revision petitioner being unemployed, cannot be called upon to bear the maintenance under Section 24, which had been fixed for the wife and the child and separate maintenance for the child alone under Section 26. He would plead that the husband has filed his proof affidavit as PW1 before the Trial Court on 03.09.2022 and it is thereafter that a series of application had been filed by the wife in order to avoid his cross examination. He would further point out that he filed his proof affidavit on 03.09.2022 and the matter has been adjourned for cross examination from 09.11.2022. To avoid the cross examination of the husband, the wife has filed one application after another only in order to drag on the proceedings. He would also bring to my notice that before the said proceedings had been initiated by the husband, the parties had filed an application for divorce invoking Section 13B of the Hindu Marriage Act before the II Additional Principal Family Court at Mysuru. On 04.01.2022, the consent given by the



wife was withdrawn. Consequently, the petition under Section 13B came to be dismissed.

8. Per contra, Mr. R.Swarnavel would submit that originally when the wife filed an application in I.A. No. 638 of 2022, she had asked for maintenance for herself and subsequently, considering the fact that she is maintaining the child all alone, she took out the application under Section 26. She would plead that the child requires constant maintenance and without income she finds it difficult to satisfy the requirements of the child's academic expenses and transportation. In addition, he would plead there are essential needs for the child like food, clothing, medicine, wages to be paid for maid, toys, etc.

9. I have considered the submissions of both sides.

10. The scope of Section 24 has been interpreted and it includes the maintenance of the child also. This is because, the mother and the child are treated as a single unit by the Court. Although the Hindu Marriage Act enables a spouse who is unable to maintain himself or herself to file an application under Section 24, it has also created another provision under Section 26 in order for the husband to pay the maintenance for the child. Both operate on



different planes. For the very fact that the wife has filed an application under Section 24 and obtained an order does not disable the mother to file an application under Section 26. The expenses of the child and that of the mother are obviously different. In *Rajnish -vs- Neha and Others (2021) 2 SCC 324*, the Supreme Court has held it is the sacrosanct duty of the husband to maintain the wife and the child. The relationship between the parties not in dispute, the duty of the father to maintain his child cannot be shirked away by the fact that previously an order had been passed in favour of the wife.

11. A perusal of the order passed by the learned Trial Judge in I.A. No. 638 of 2022 would show that the Court though had commented that he has a duty to maintain the wife and child, it proceeded further to note that the petitioner frequently travels to Villupuram from Mysore and therefore she is spending a considerable amount. The final portion of the order in I.A. No. 638 of 2022 makes it clear that the interim maintenance of Rs.25,000/- is for the respondent wife alone and also towards the litigation expenses.

12. The child is innocent in itself as well as innocent of the litigation that is going on between the parents. The child also requires to be protected and to be brought up in a proper manner. Lest financial inability affect the growth of the child, it is for that purpose, the Parliament which enacted Section 24 had also enacted Section 26. Therefore, the husband cannot plead



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since he is maintaining the wife, he is absolved of his duty to maintain the child also. I note that the child is residing in Mysore which in itself is a metropolitan city. A sum of Rs. 15,000/- awarded towards monthly interim maintenance, would convert to hardly Rs.500/- per day for the child, which in my view is reasonable. Therefore, on the grounds pleaded by Mr. R.Srinivas, I am not inclined to interfere with the order of the learned Family Judge in I.A. No. 417 of 2023 dated 20.12.2023.

13. At this stage, I should note that PW1 has been in the witness box for more than 1 year. Prolonging the litigation would only result in causing agony to both the parties. This is especially evident since the wife is travelling to defend the litigation from Mysore to Villupuram. It is in the interest of both parties that the proceedings culminate at an early date. Accordingly, while dismissing this revision confirming the order of the learned Judge in I.A. No. 417 of 2023, I am inclined to direct the learned Family Judge at Villupuram to ensure that the trial proceeds smoothly without any unnecessary adjournments and to culminate the judgment within six months from the date of receipt of a copy of this order. Both the counsels submit that it is their intention that both of them will cooperate with the learned Trial Judge in this regard. Before taking up the petition for disposal, the learned Trial Judge shall ensure that the civil revision petitioner has cleared all the arrears in both the applications filed



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by the wife.

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14. In the result, the civil revision petition is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

12.09.2024

Index : Yes/No

Speaking order : Yes/No

NCC : Yes/No

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To

The Family Court at Villupuram.



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V.LAKSHMINARAYANAN, J.,

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