



C.R.P. No. 3330 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3330 of 2024

and

C.M.P. No. 17861 of 2024

R.Govindasamy

... Petitioner / Petitioner

Vs.

P.Thulasidevi

...Respondent / Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 23.01.2024 passed by the learned Family Court at Tiruppur in H.M.O.P. No. 538 of 2021.

For Petitioner : Mr. R.Prem Narayan

For Respondent : Mr. K.Myilsamy

ORDER

This civil revision petition arises against the docket order dated 23.01.2024 passed by the learned Family Court at Tiruppur in H.M.O.P. No. 538 of 2021.

2. H.M.O.P. No. 538 of 2021 was initiated by the civil revision petitioner seeking for divorce on the grounds of cruelty.

3. The petitioner/husband married the respondent/wife on 04.02.2021 at



Vellimalai Temple in Tirupur District. He would state that the wife did not behave as required in matrimony and used constantly fight with him for petty reasons. He would plead that he suffered physical and mental harm at the hands of the wife and she left matrimonial home on 15.05.2021. Therefore, he sought for divorce.

4. The respondent/wife entered appearance and filed a detailed counter. She would state that from the wedlock, a child was born and she is taking care of the child. Her specific plea is that the petitioner has spent not even a single penny for the child. With very great difficult, the respondent has maintained her child with the help of her parents. After the receipt of the counter, the matter was referred to counselling.

5. On 22.11.2023, the matter was taken up by the learned Family Judge and on the basis of the memo filed by both parties, it was agreed that the husband will pay a sum of Rs.10,000/- as maintenance to the child. Yet again, the matter was listed for hearing on 15.12.2023 for payment of further amount of Rs.10,000/-. The case was adjourned on that date to 23.01.2024. On 23.01.2024, the husband paid further sum of Rs.10,000/-. The Court directed the husband to pay a sum of Rs.5,000/- per month towards maintenance of the



child. Aggrieved by the same, the present revision.

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6. Heard Mr. R.Prem Narayan for the civil revision petitioner and Mr. K.Myilsamy for the respondent.

7. Mr. R.Prem Narayan would submit that as required under Section 24 of the Hindu Marriage Act, 1955, no application had been filed by the wife seeking for maintenance and therefore, the direction given by the learned Judge is ultravires the powers vested in him. He would further draw my attention to the order passed in Criminal Appeal No. 3446 of 2023 in ***Aditi Alias Mithi -vs- Jitesh Sharma dated 06.11.2023*** holding that, if no affidavit is filed as directed by the Supreme Court in ***Rajnesh -vs- Neha*** reported in ***(2021) 2 SCC 324***, the order of maintenance deserves to be set aside.

8. Mr. K.Myilsamy would submit that dealing with the interest of the child, the Court has exercised the *parens patriae* jurisdiction and hence no exception can be taken to the order of the learned Trial Judge.

9. I have carefully considered the submissions made by both sides.



10. Insofar as Mr. Prem Narayan's submission that an application is necessary under Section 24, bare reading of the said Section would show that the Court on coming to conclusion that wife has no independent income for herself, it may on an application by the wife, order the husband to pay maintenance. It is beyond cavil that Section 24 not only includes maintenance towards the wife but also the children.

11. Mr. Prem Narayan is correct that no application in writing has been filed by the wife. However, I have to refer to a provision available in Tamil Nadu. This Court in exercise of the powers conferred it under Section 122 of the CPC and Article 227 of the Constitution of India and framed rules as to how applications must be filed before the Trial Courts. These are the Civil Rules of Practice and Circular Standing Orders issued by the Court in SRO C-25/90. Rule 3 of the Circular Standing Order deals with definitions, which also speaks about applications. Applications is an inclusive definition in terms of the said provision. Rule 3(2) states 'Application' includes 'execution application', 'execution petition' and 'interlocutory application', whether written or **oral**. Therefore this makes it clear that there need not be a written application, at all points of time, for a wife seeking maintenance. The circumstances under which the wife has been maintaining the child, which



was born from the wedlock, has been set forth in paragraph no.6 of the counter. Therefore, the first portion of the said Section stands satisfied.

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12. The proceedings of the Court, which Mr. R.Prem Narayan has been kind enough to produce before this Court, shows that on 22.11.2023, a memo was filed by both sides agreeing to pay Rs.20,000/- as maintenance for the child. This shows that the civil revision petitioner had accepted his liability for payment of maintenance. Insofar as the order dated 23.01.2024, it is only an interim arrangement that has been arrived at by the Court pending disposal of the proceedings.

13. The amount of Rs.5,000/- fixed for the maintenance of the child is certainly not final. Being an interim arrangement, I would not interfere with the said order in revision. It is always open to the wife to file an appropriate application in writing seeking for maintenance for herself and for the child. At that stage, I am certain that the affidavit of assets as required in **Rajnesh -vs- Neha** reported in (2021) 2 SCC 324 will be filed by both sides. In fine, being an interim arrangement to enable the parties in a litigation to take care of the maintenance of the child and as it is, one passed with the interest of the child, I am not inclined to interfere.



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

Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
pal

To

The Family Court at Tiruppur.



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V.LAKSHMINARAYANAN, J.,

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