



C.R.P. (PD) No.2996 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.2996 of 2024
and C.M.P.No.16074 of 2024

Saipriya

.. Petitioner

Versus

B.Gopinath

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated and amendment dated 02.01.2024 and 08.02.2024 respectively in I.A.No.306 of 2021, seeking interim maintenance under Section 24 of the Hindu Marriage Act, in O.P.No.217 of 2020 on the file of the Subordinate Judge, Poonamallee.

For the Petitioner : Mr.V.M.Venkatramana

For the Respondent : Mr.M.Sreedhar



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ORDER

This Civil Revision Petition arises against the order of the learned Subordinate Judge, Poonamallee in I.A.No.306 of 2021 in H.M.O.P.No.217 of 2020.

2. The Civil Revision Petitioner is the wife. The respondent is the husband. H.M.O.P.No.315 of 2018 was initiated by the husband, seeking for a declaration that the marriage entered into between petitioner and the respondent is null and void. He had invoked Section 5(1) read with Section 11 of the Hindu Marriage Act. Subsequently, on the intervention of this Court, the H.M.O.P.No.315 of 2018 was transferred from the file of the Sub Court, Kanchipuram and was sent to the file of the Sub Court, Poonamallee. It has been re-numbered as H.M.O.P.No.217 of 2020.

3. Pending the litigation, the wife took out an application in I.A.No.306 of 2021, seeking interim maintenance. She invoked Section 24 of the Hindu Marriage Act. She claimed her husband is a Director at M/s.Vara



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Mahalakshmi, a well known chain of silk sarees and he is also the owner of M/s. SKP Silks, a saree vending unit in Kanchipuram and also a Director of an institution named, Pasumai Kanchi. Further, she relied upon the affidavit filed by the husband with the election commission of India while he was contested the 2021 Tamil Nadu State Legislative Assembly elections from the Kanchipuram Constituency. The petitioner was a candidate nominated by the Makkal Needhi Maiyam, a political party floated by the famous Actor Kamal Hasan. She also enclosed medical certificates stating that she is spending considerable amounts towards the treatment of the child born from the wedlock. Therefore, she sought for interim maintenance of Rs.1 Lakh, pending the disposal of the H.M.O.P.No.217 of 2020.

4. The husband entered appearance and pleaded that the wife is a divorcee. She had married twice before and it is her *modus operandi* to use the institution of marriage to gain unfairly. He denied the fact that he is the Director in the chain M/s.Vara Mahalakshmi Silks, Kanchipuram, but accepted that he is an employee of the said institution. He accepted that he is earning a sum of Rs.1.5 Lakhs per month. He also accepted that he is doing silk business



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at Arani, under the name and style of M/s. SKP Silks Sarees. He further submitted that he had taken a loan of Rs.30 Lakhs from M/s Karur Vysya Bank, for the purpose of this business. On account of loss in the business, he has not been in a position to service the EMI's and thereby he had been classified as a defaulter. He further urged that he is paying around Rs.40,000/- as EMI for a loan and further sum of Rs.60,000/- towards EMI for his Car. In addition to these expenses, he has stated that he is paying a sum of Rs.1 Lakh for his elder son's school expenses who is studying in Maharishi School at Kanchipuram. He claims that he is making the payment of Rs.1 Lakh for the child born to the petitioner and the respondent. Due to heavy stress in business, he pleaded that his sugar levels and blood pressure have reached unmanageable levels. He finally urged that he cannot pay interim maintenance as he has suffered loss in his business and he is meeting his day to-day expenses by borrowing from his employees at M/s.Vara Mahalakshmi Silks, Kanchipuram.

5. The parties filed their respective affidavits of assets, as directed by the Supreme Court in ***Rajnish vs Neha and another (2021 2 SCC 324)*** . The



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learned Subordinate Judge, took up the application for disposal and at that stage, the wife filed Exs.P.1 to P.12 which included the social media pages of the respondent – husband and the affidavit filed by him to the Returning Officer, Kanchipuram Constituency. Neither party entered the witness box. The husband did not file any documents to substantiate his case.

6. On the basis of the pleadings and the documents that have been filed by the parties, the learned Judge came to a conclusion that the husband be directed to pay a sum of Rs.25,000/- p.m., to the wife and Rs.15,000/- p.m., to the son as interim maintenance from the date of the order. Aggrieved by the said order, the wife is on revision before me.

7. Notice was ordered in the said revision on 06.08.2024. Mr.M.Sreedhar has entered appearance for the respondent – husband.

8. I heard, Mr.V.M.Venkatramana and Mr.Sreedhar for the parties.

9. Mr.Venkatramana, submitted that the respondent – husband is a



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Managing Director of the famous silk saree chain of shops namely M/s.Vara Mahalakshmi, Kanchipuram. In addition, he has also produced movies. He pleads that the Court has granted maintenance only from the date of the order and not from the date of the petition. He urges that the child born from the wedlock is aged about 7 years. The child was originally studying in Chinmaya Vidyalaya and currently studying in Narayana Mission School and hence, he seeks for enhancement of the maintenance granted by the Trial Court.

10. Rejecting these arguments, Mr.Sreedhar points out that the petition itself was filed for nullity under Section 11 of the Hindu Marriage Act and in such a proceeding, a petition under Section 24 is not maintainable. He drew my attention to the averments in the counter and argues that as the husband has suffered heavy loss in his Silk business, it is impossible for him to pay the amount demanded by the wife. With respect to the social media pages, which have been produced by the wife, before the Trial Court, Mr.Sreedhar urges that those are self-boosting statements made by the husband and no reliance can be placed upon the same, at the time of fixation of maintenance.



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11. Finally when arguing the maintenance to the child, Mr.Sreedhar submits that the respondent - husband is willing to take the custody of the child and attend to all his needs and there is no necessity to pass separate order of maintenance.

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

13. Since the preliminary objection has been raised by Mr.Sreedhar, that an application for interim maintenance under Section 24 is not maintainable, when the husband has invoked Section 11 of the Hindu Marriage Act, I have to refer to the said provision. Under Section 24 of the Hindu Marriage Act, the Court is entitled to grant maintenance when the wife pleads that she does not have any independent income sufficient for her needs and for necessary expenses for the proceedings. Section 24 begins in the following terms, “where **in any proceeding** under this Act” this shows that whether it is a petition for declaration that the marriage is void or as hit by Section 5, or if it is a petition for divorce filed under Section 13, it would be a proceeding under the Act.



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14. If I were to accept the argument of Mr.Sreedhar, that where the husband pleads nullity of marriage and a petition Section 24 is not maintainable, then the Section would have to be read as 'where any proceeding under this Act is initiated for divorce'. The Parliament, when it made Section 24, was well aware that a petition can be filed under Sections 11, 12 as well as under Section 13 of the Act. It did not exclude Section 11 from the operation of Section 24. On the contrary, it had declared that in case of “any proceeding under the Act”, a spouse who is unable to maintain herself is entitled to file an application. When the statute is clear and unambiguous, I cannot by an interpretation of the said Section, limit the scope of the said provision. That being the position I have to hold that even in a proceeding where a petition is filed for a declaration that the marriage is void, the wife is entitled to take out an application under Section 24.

15. If I were to agree with Mr.Sreedhar, the consequences will be disastrous. In case, a husband wants to deny maintenance to the wife, all that



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he has to do is to plead that the marriage is void one and thereby exclude the right of the wife to claim interim maintenance. That not being the purport of Section 24, and as the husband has initiated the proceedings under Section 11, I conclude that the wife is entitled to maintain the petition under Section 24.

16. This takes me to the second point that has been urged by Mr.Sreedhar that the wife having been employed is not entitled to make any claim of maintenance. As pointed out in the earlier part of the Judgment, neither the husband nor the wife graced the witness box. There is absolutely no evidence that has been let in by the husband before the Trial Court that the wife is employed. Without an evidence, I am not in a position to come to the rescue of Mr.Sreedhar's client.

17. With respect to the quantum of maintenance, the view that had originally been taken by the Bombay High Court was that 1/4th of the income of the husband may be granted by the Court, as maintenance. Subsequently, due to the development of law, the court had to take note of the status of the parties. In ***Raman Bawa Vs. Amit Jain (2015 SCC OnLine P&H 18478)***, the



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Punjab and Haryana High Court had held that considering the station and status of the parties, a Court is entitled to fix maintenance. I have to add, the view taken by that Court found acceptance in the Supreme Court. The learned Single Judge (Justice K.Kannan) had held that the husband should not only provide Rs.2 Lakhs a month considering his status, but should also provide the wife with a Car of Mercedes Benz make as well as other provisions behooving the status of being a spouse of a wealthy person. This amplifies the position of law in ***Bharath Hedge Vs. Saroj Hegde. (2007 SCC OnLine Del 622)***. The Delhi High court held at the time of fixation of maintenance that the amount as maintenance should be the same level that the wife or the husband would have been entitled to, had they continued to reside in the matrimonial home. Therefore, the march of the law being that if the husband is earning handsome income, the wife should be maintained at the same status as she would have been, incase, she continued to live in the matrimonial home. I should point out here, the Judgment in **Bharat Hedge** 's case (cited *supra*) was cited with the approval by the Supreme Court in **Rajnesh's** case (cited *supra*).

18. In this case, the wife has produced before the Trial Court in



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Ex.P.1, the online Bio-data that had been given by the respondent-husband at the time of advertisement of his marriage. This advertisement was given on the website 'tamilmatrimony.com'. He had held out that he is in textile business, and he is holding the following occupations of Chief Executive Officer / President, Director and Chairman. He had also stated that his income is about Rs.1.8 Crores a year. It is only on the basis of this advertisement, the petitioner married the respondent.

19. In so far as the social media post is concerned, the husband has held out to the entire world that he is the owner of SKP Silk Sarees, Director of Kanchipuram Vara Mahalakshmi Silks and a Director of Pasumai Kanchi. This is not an isolated post. One can see these projections consistently throughout the records that has been produced by the petitioner-wife. In addition, it is seen from Ex.P.3 that the respondent – husband had been nominated by a political party to be its candidate for the 2021 general elections. It is a common knowledge that a political party will not normally nominate an indigent person. The husband in the said affidavit has given details of his property as well as his bank accounts.



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20. Furthermore, the petitioner has been able to produce records to show that the husband is producing movies for the purpose of commercial exploitation. This shows that the husband is holding a high position not only in political circles as he is the State Secretary of Makkal Needhi Maiyam, but he is also well-established businessman in Silk Saree business. He is doing the business in the hot bed of Silk Saree Business at Kanchipuram.

21. The learned Trial Judge has refused to accept the affidavit of assets filed by the husband to the election commission on the ground that the same has not been produced from proper custody. First, the affidavit has been uploaded on to the website of the Election Commission of India and it is freely downloadable by any person, who is interested to see the assets held by the candidate. Secondly, the husband has not denied anywhere in the counter affidavit that the affidavit filed before the Election Commission of India is a fabricated one. Therefore, the finding of the Trial Court that it cannot rely upon the said affidavit suffers from perversity. In fact if the Court had wanted to verify it, it could have logged into the website of the Election Commission of India and could have compared the same. That exercise is unnecessary in



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this case, because, the husband has not denied that he is a candidate for 2021 General Election at the Kanchipuram Constituency, on a ticket granted by a political party and the details of assets given in the affidavit filed by him before the Election Commission are wrong.

22. Now, turning to the point of maintenance to the child, Mr.Sreedhar, very fairly submitted that the father has been paying the school fees for the child. It is the duty of the father, not only to pay the school fees but also to made such provision as may be necessary for the maintenance of the child and his spouse. The mother has produced Ex.P.7 to P.12, viz., the medical records of the child. It shows the child was taken for treatment to Ramachandra Medical College and Research Institution. Hereto, the husband has not denied the said treatment. The other records show that the child has been regularly taking treatment for the hyper pigmented patch on the eye lid with a senior consultant - Dermatologist at Kanchi Kamakoti Child Trust Hospital, a famous paediatric hospital at Chennai. Therefore, not only the father is liable to pay the child's school fees, but he also should bear the medical expenses.



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23. At this stage, I have to necessarily agree with Mr.Venkatramana that the Sub Court committed an error in directing the husband to pay the maintenance from the date of the order. The purpose of giving maintenance is to have a level playing field for the wife to enable her to withstand the assault of the litigation launched by the husband. Yet again referring to **Rajnesh's** case (cited *supra*), I have to point out that the wife would normally be entitled to maintenance from the date of petition.

24. Turning to the next aspect, the wife has sought for litigation expenses under Section 24 of the Hindu Marriage Act. The wife is entitled not only to interim maintenance, but also “the necessary expenses of the proceedings”. A perusal of the impugned order shows, nowhere the Court has given any reason for denying the wife the amount incurred towards litigation expenses. The Court felt that a sum of Rs.1 Lakh that has been sought for towards litigation expenses had not been substantiated. However, it could have fixed a reasonable figure and granted the said amount too.

25. In the light of the above discussion, the Civil Revision Petition



succeeds, the order passed by the learned Subordinate Judge, Poonamallee, in I.A.No.306 of 2021 in H.M.O.P.No.217 of 2020 stands modified;

(i) The wife will be entitled to maintenance of Rs.50,000/- per month and the child will be entitled for maintenance of Rs.25,000/- per month. In addition the father would continue to pay the school fees of the child. The mother shall give the intimation to the father as regards the school fees directly to the father and the father shall deposit the said amount to the school's account and collect the receipts and keep it in his custody and produce it, in case there is any demand.

(ii) The litigation expenses are fixed at Rs.40,000/-.

(iii) The wife will be entitled to the aforesaid amounts from the date of filing of I.A.No.306 of 2021 i.e., from the month of January 2021 onwards. The differential amount of maintenance on the enhancement that has been done by this Court shall be cleared within a period of 12 weeks from the date of receipt of a copy of this order.

(iv) The learned Subordinate Judge, Poonamallee, on coming to the conclusion that the arrears have been cleared and the husband is paying the



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aforesaid amounts fixed by this Court as maintenance on monthly basis, shall endeavour to dispose of the H.M.O.P.No.217 of 2020, within a period of six months from the date on which the husband files a memo, that he has cleared all the arrears.

26. With the above directions, this Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

28.10.2024

Index : Yes / No
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Neutral Citation : Yes / No
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To
The Subordinate Judge, Poonamallee.



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V.LAKSHMINARAYANAN, J.,

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