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C.R.P.(PD).No.3220 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

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THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3220 of 2024
and C.M.P.No.17203 of 2024

Saravanan @ Venkatachalam

... Petitioner

-Versus-

T.Suguna

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 15.03.2024 made in I.A.No.8 of 2023 in H.M.O.P.No.20 of 2020 on the file of the Court of the Family Judge, Tirupur.

For the Petitioner : Ms.S.Dharani

ORDER

This Civil Revision petition is at the instance of the husband. He presented H.M.O.P.No.20 of 2020 before the Family Court, Tiruppur, seeking for divorce.



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WEB COP 2. The wife took out an application in 2023, seeking interim maintenance. She has filed an affidavit stating that she has a child to take care of and she is unable to maintain herself and therefore sought for Rs.50,000/- per month as interim maintenance.

3. It is her specific plea in the affidavit that the husband has a shop that sells Pooja articles and is making sufficient income from the same. She would also plead that despite the fact that the child – V.Balaji was born from the marriage, the husband has not taken any steps to maintain the child. She would plead that the husband is earning about Rs.3 Lakhs per month from the shop.

4. On service of this application, it was received as I.A.No.8 of 2023, thereafter, the learned Judge received a counter from the respondent.

5. The respondent admitted that his father is running a shop, by the name of Ambal Pooja Store and that he is a mere employee in that shop, drawing Rs.10,000/- per month. Apart from that, he states that the petitioner is having a property at Rakkiapalayam Village in her own name and also owns a Maruthi S



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cross vehicle. He would state that the wife has admitted the child in a fancy school, for which she is expending Rs.2,60,000/- per year. He would also allege that the wife used to live a lavish lifestyle, beyond her means, whereas, the husband is at the mercy of his father. Therefore, he sought for dismissal of the petition.

6. During the course of the maintenance proceedings, neither the husband nor the wife had filed the affidavit of assets and liabilities as directed by the Supreme Court in ***Rajnesh Vs. Neha and Another*** ((2021) 2 Supreme Court Cases 324). Therefore, the learned Judge on the basis of the pleadings, fixed the interim maintenance at Rs.20,000/- per month. Aggrieved by the same, the present Civil Revision Petition has been filed.

7. Heard, Ms.Dharani, the learned counsel for the petitioner.

8. Ms.Dharani, would place two fold submissions. The first submission is that the wife had failed to file her affidavit of assets and liabilities as directed by the Supreme Court in ***Rajnesh's case*** (cited supra) and therefore, she is not



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entitled to claim maintenance. The second submission is that the amount of Rs.20,000/-, that has been fixed by the learned Judge, is way above his capacity and therefore, the order of the learned Judge requires to be interfered with.

9. Ms.Dharani, is absolutely right in terms of the judgment in ***Rajnesh's case*** (cited supra), the Supreme Court in exercise of powers under Article 136 read with Article 142 of the Constitution of India had given a direction to all the Courts dealing with maintenance, guardianship, divorce and other matrimonial proceedings that the parties to the litigation should file their affidavit of assets and liabilities.

10. A careful perusal of the Judgment shows that nowhere the Supreme Court had stated that if the wife does not file an affidavit of assets and liabilities, she is not entitled for maintenance. In terms of Section 24, a wife is entitled to seek for maintenance when she has no independent income, sufficient to maintain herself or her child. The factum that the wife might be staying away from the husband, even if it is be her own default, it is not a ground for denial of maintenance under Section 24. This is because, under Section 24, the issue of going into the cause of separation does not arise. The



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provision as it reads is meant for having a level playing field between the husband and the wife while proceeding further with their litigation. The Hindu Marriage Act demands that by granting interim maintenance to the wife, a person, who belongs to the weaker female sex is not put at disadvantage and is able to face the onslaught of the litigation, that has been launched by the husband. Therefore, the submission of Ms.Dharani, that the failure to file an affidavit of assets and liabilities by the wife is fatal to the case, is not acceptable to me.

11. I should further point out that though the husband has pleaded that he is working as an “employee in the shop that belongs to his father”, he has not produced any certificate, though an opportunity had been granted by the learned trial Judge to produce the records. The husband who accuses the wife, for not filing an affidavit of assets and liabilities is guilty of the same conduct. He had not filed his affidavit of assets as to what is the income that he is generating. As pointed out by the Supreme Court in **Rajnish's case** (cited supra), the purpose of filing an affidavit is to enable both the parties to come to the Court in clean breast, disclosing their respective income. For the fact that the wife or the husband does not file an affidavit of assets and liabilities, does



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not take away the power of the Court to fix the maintenance in the light of the pleadings between the parties.

12. The plea that the husband is not able to generate Rs.20,000/- per month, could have been considered by this Court, had he filed his affidavit or at least some records before this Court. On the contrary, from his pleadings, it is clear that the wife is spending Rs.2,60,000/- per year towards the education of the minor child – V.Balaji.

13. In so far as the scope of the revision under Article 227 of the Constitution of India, as against the interim maintenance is concerned, unless and until the amount is exorbitant, excessive, capricious or arbitrary, the Court would not normally interfere with the said order. This is because, the learned Trial Judge had the benefit of looking at both the parties and on that basis arrived at the conclusion in fixing the maintenance. A sum of Rs.10,000/- per head to the wife and child works out to about Rs.300/- per day per person. Rs.300/- can neither be said to be excessive nor capricious.

14. Furthermore, the learned Trial Judge is very careful in not granting the interim maintenance from the date of filing of the H.M.O.P., but has



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granted it only from the date of filing of the petition under Section 24 of the Hindu Marriage Act. It is a well balanced order and does not require interference.

15. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.08.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking / Non Speaking Order

To
The Family Judge, Tirupur.



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V.LAKSHMINARAYANAN, J.,

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