



C.R.P.(PD).No.3059 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3059 of 2024

Mukesh Jain

.. Petitioner

Versus

Koushalya

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order, dated 06.07.2024 passed in I.A.No.5 of 2024 in O.P.No.3852 of 2015 by the learned VI Additional Principal Judge, Family Court, Chennai.

For Petitioner : Mrs.S.P.Arthi

For Respondent : Mr.N.Seshadri

ORDER

This Civil Revision Petition arises against the order passed by the learned VI Additional Principal Judge, Family Court at Chennai in I.A.No.5 of 2024 in O.P.No.3852 of 2015.



C.R.P.(PD).No.3059 of 2024

WEB COPY

2. O.P.No.3852 of 2015 was originally presented by the civil revision petitioner/husband before the Family Court at Jodhpur as C.O.C.(O.P).No.268 of 2006. He invoked Section 13A of the Hindu Marriage Act, 1955. The said proceeding ended in an *ex parte* decree of divorce on 29.11.2008. Subsequently, by virtue of the orders passed by the Supreme Court, C.O.C.(O.P).No.268 of 2006 and the petition filed to set aside the *ex parte* decree stood transferred to the file of the VI Additional Family Court, Chennai.

3. On transfer, the petition filed to set aside the *ex parte* decree was re-numbered as I.A.No.1987 of 2016. This application was allowed by the learned VI Additional Principal Judge, Chennai on 18.05.2022. Against that order, the husband preferred a revision before this Court in C.R.P.No.2773 of 2022. Finding that the reasons given by the wife make out a case for setting aside the *ex parte* decree, I confirmed the order of the learned Trial Judge in and by way of an order, dated 24.04.2024. At that stage, I noticed that the parties have been litigating from the year 2006 and are yet to see the end of the litigation, I directed the cross-examination of P.W.1 to commence on 03.05.2024 and to be completed by 31.07.2024.



C.R.P.(PD).No.3059 of 2024

WEB COPY

Thereafter, the cross-examination of the husband was to commence from 05.08.2024 and to be completed by 30.11.2024. I fixed the time limit, by the said order, taking into consideration that the status of the parties was still in limbo for over a decade.

4. Apart from this proceeding, the wife had also initiated a proceeding for maintenance invoking Section 125 of the Code of Criminal Procedure. In the said proceeding, the Supreme Court had directed the husband to pay a sum of Rs.20,000/- per month. In default, to strike out the defence of the husband. It is not in dispute that the husband defaulted in payment of the maintenance and therefore, his defence in M.C.No.413 of 2007 stood struck off. After the order was passed by this Court on 24.04.2024, the parties seem to have gone before the VI Additional Family Court, Chennai and commenced the trial.

5. Mrs.S.P.Arthi, who represents the husband, represents that the cross-examination of the wife in the petition filed by her for restitution of conjugal rights in O.P.No.348 of 2011 has been completed. She would plead that when the cross-examination of the wife was half-way through in



C.R.P.(PD).No.3059 of 2024

O.P.No.3852 of 2015, the wife took out an application in I.A.No.5 of 2024.

WEB COPY

The plea of the wife in I.A.No.5 of 2024 is that the husband had stopped paying maintenance as directed under Section 125 of CrPC proceedings and therefore, is not entitled to continue further in both the restitution of conjugal rights proceedings as well as in the divorce proceedings initiated by him.

6.After receipt of a counter from the civil revision petitioner/husband, the learned Judge proceeded to pass an order on 06.07.2024 directing the husband to deposit a balance of Rs.4,40,000/- into Court on or before June, 2024. In default, she ordered the pleadings and the defence of the petitioner/husband in the pending Original Petitions to be struck off. The court adjourned the matter to 19.07.2024 for reporting compliance. On 19.07.2024, as the husband did not come up with the amount of Rs.4,40,000/-, the consequential order came to be passed. Aggrieved by the order dated 06.07.2024, the present Civil Revision Petition has been filed.

7. Heard Mrs.S.P.Arthi, learned Counsel for the petitioner and Mr.N.Seshadri, learned Counsel for the respondent.



C.R.P.(PD).No.3059 of 2024

WEB COPY

8. Mrs.S.P.Arthi would submit that the consequences of non-payment of maintenance has already been felt by the husband since his defence in M.C.No.413 of 2007 has been struck off. She would state that the husband cannot be visited with the same consequences again in the matrimonial proceedings initiated by him and that initiated by his wife.

9. Mr.N.Seshadri would submit that it is the direction of the Supreme Court that the husband pays the maintenance and in default, his defence must be struck off. He would submit that it matters not whether the husband's defence is struck off in the maintenance case since the husband is in default, he is liable to face the consequences of the order in all the proceedings that are initiated between the husband and wife. He would also bring to my notice that the husband had initiated an application before the Supreme Court in Diary No.24861 of 2021 seeking for a prayer to stop paying the interim maintenance. He would state that the said petition was dismissed even at the diary stage itself on 03.02.2022 holding that the request of the husband to not pay the maintenance is untenable. Therefore,



C.R.P.(PD).No.3059 of 2024

WEB COPY

Mr.N.Seshadri would submit that it is the duty of the husband to continue to pay the maintenance to the wife pending disposal of the litigation.

10. In his second submission, Mr.N.Seshadri would state that the order passed on 06.07.2024 is in the nature of an *ex parte* order and therefore, the only solution for the civil revision petitioner/husband is to prefer an application before the Trial Court either under Order IX Rule 7 or under Order IX Rule 13 of the Code of Civil Procedure, 1908. He would argue that the order of striking of is in the nature of "intense *ex parte* order" and therefore, this Civil Revision Petition is not maintainable.

11. Insofar as the submission of Mrs.S.P.Arthi that, since her defence in the Maintenance Case has been struck off, she cannot be called upon to pay the maintenance by the wife in the present proceeding, is concerned, I am not in agreement with her. I am in entire agreement with Mr.N.Seshadri on this point.

12. It is the duty of the husband to pay the maintenance to the wife pending disposal of matrimonial proceedings. It matters not whether it is



C.R.P.(PD).No.3059 of 2024

WEB COPY

under Section 24 of the Hindu Marriage Act, 1955 or under Section 125 of the Code of Criminal Procedure or an order passed by a Civil or Family Court invoking the provisions of Protection of Women from Domestic Violence Act, 2005. The purpose of granting interim maintenance to a wife is to ensure that she is able to survive the wrath of a litigation. The law presumes and holds out a protective umbrella for the wife in the form of interim maintenance so as to enable her to tide over the difficulties she faces when not being provided for by her husband. As there are no other means to grant this protection, if a maintenance is granted to a wife, then, the amount that is given to her will help her to tide over the difficulties after having been turned out of the matrimonial home.

13. I would look at it in another angle also. The wife, not earning any money by herself, would find it difficult to litigate the matter on her own steam. Hence, if maintenance is granted by the husband, it will level the playing field between the parties. Because the husband being financially well-off, the field is skewed. This skewed field is made even by directing the husband to pay maintenance. Hence, the submission of Mrs.S.P.Arthi that since her client has already suffered the consequences of non-payment



C.R.P.(PD).No.3059 of 2024

WEB COPY

of maintenance in the proceeding initiated under Section 125, the Court is powerless to strike off the defence or to dismiss the petition for non-payment of maintenance in the other connected proceeding, is without any merits and stands rejected.

14. Now, turning to the point of Mr.N.Seshadri that the civil revision petition is not maintainable since it is an *ex parte* order that has been passed and the only remedy for the party is to approach the same Court by way of a petition concerned. Here, I am not in agreement with Mr.N.Seshadri.

15. Both the Order IX Rule 7 and Order IX Rule 13 of the Code of Civil Procedure operate on specific grounds. In order to invoke Order IX Rule 7 of the Code of Civil Procedure, the party must have suffered an order setting him *ex parte*. At that stage, the Court could have passed an *ex parte* order or an *ex parte* decree. For the said purpose, when the case is "called on for hearing", the defendant should not have put in appearance. In case he appears, the Court cannot construe his presence as being absent and thereafter set him *ex parte*. In fact, the learned Trial Judge has not adopted any such means as argued by Mr.N.Seshadri. This is a simple case where



C.R.P.(PD).No.3059 of 2024

WEB COPY

the Supreme Court had fixed maintenance for the husband to pay and the husband defaulted in payment of the same. Therefore, following the practice that has been developed by matrimonial Courts, the defence of the husband has been struck off and his divorce petition has been dismissed. This does not fall under any of the categories as contemplated under the Code of Civil Procedure.

16. On realising the consequences that he has been visited with for non-payment of maintenance, if the husband comes forward with an application or approaches a higher Court stating that he will pay maintenance, then, the Court possesses the power to put the clock back if the husband makes good his default.

17. I have searched the Code of Civil Procedure in vain and I am not able to see any provision which speaks about "an intense" *ex parte* order. This term seems to be one which has born out of legal ingenuity of Mr.N.Seshadri. Since the code does not contemplate any such provision, I am not in a position to accept the said argument.



C.R.P.(PD).No.3059 of 2024

WEB COPY

18. The result of this discussion is that if the husband defaults in payment of maintenance, power is available to the Court to strike off his defence in case it is the proceeding initiated by the wife or/and dismiss the petition initiated by the husband.

19. I will treat such order in the nature of eclipse. The defence of the husband and the right to prosecute the petition stands eclipsed as long as he does not pay the maintenance. Once he realises his mistake or tides over the financial difficulties that he is facing and comes forward with the payment, then, it is the duty of the Court to ensure that the eclipse that has been created by the procedure adopted by it, is removed. The advantage of the wife is that the amount that she is legally entitled to stands credited to her account. Therefore, it is neither an *ex parte* order nor is it an “intense *ex parte*” order as put by Mr.N.Seshadri, but only a method developed by the Court to ensure that the husband complies with the order of interim maintenance.

20. Mr.N.Seshadri would submit that non-payment of maintenance amounts to contempt of Court. An inability to pay an amount, whether it is



C.R.P.(PD).No.3059 of 2024

WEB COPY

artificial or natural, cannot be used as a tool for contempt. This is because a party always has a remedy under the Code of Criminal Procedure to arrest the husband for default in payment of maintenance and to strike off the defence or dismiss his petition in civil proceedings. An order to pass money cannot amount to contempt of Court. If this argument is stretched, then, any defendant, who suffers a money decree, need not be proceeded against for execution. All that the successful plaintiff would have to do is initiating proceedings for contempt. I am aware that this is a logic of *reductio ad absurdum*. Yet, I am still applying to the facts of this case because Mr.N.Seshadri vehemently contends that the non-payment of maintenance amounts to contempt of the orders passed by the Court. Having put these two arguments behind me, I now turn to the present situation.

21. On 14.08.2024, I pointed out to Mrs.S.P.Arthi that when the Supreme Court had confirmed the order of maintenance passed by the Trial Court, it is the duty of her client to pay the maintenance. Though there was some initial resistance from Mrs.S.P.Arthi, subsequently, wisdom had dawned on her client and consequently, she has come forward to pay the arrears of maintenance as claimed by the wife. She has brought forth the



C.R.P.(PD).No.3059 of 2024

WEB COPY

Demand Drafts drawn on I.D.F.C First Bank, Nungambakkam in D.D.Nos.062361, 062362 and 062363 for a sum of Rs.2,00,000/-, Rs.1,80,000/- and Rs.1,80,000/- respectively in all it amounts to Rs.5,60,000/-. This figure is disputed by Mr.N.Seshadri.

22. Even in the order that had been passed by me on 14.08.2024, I had made it clear that in case the wife is entitled to an additional amounts, the same will be calculated by the learned Trial Judge at the time of disposing of both the proceedings. This amount was directed to be paid, without prejudice to the claim of the husband that he has paid an excess or to the right of the wife stating that her husband is still liable to pay amounts apart from the aforesaid figure. This amount is directed to be paid by the husband only in order to restore his right of defence in O.P.No.348 of 2011 and to prosecute his petition for divorce in O.P.No.3852 of 2015.

23. The timelines that had been fixed by me in the order in C.R.P.No.2773 of 2022 will continue to hold good. The husband and the wife shall co-operate for the disposal of the case. In case, the husband defaults in payment of maintenance for subsequent periods, the Court shall



C.R.P.(PD).No.3059 of 2024

WEB COPY

take into consideration the order passed by it on 06.07.2024 and the order passed by this Court today and pass appropriate orders in the proceedings.

Similarly, in case the Court gets a feeling that the wife is trying to drag on the matter, as alleged by Mrs.S.P.Arthi and stoutly denied by Mr.N.Seshadri, then, it shall invoke the provisions of Order 17 of the Code of Civil procedure and enter upon a judgment.

24. The amount of Rs.5,60,000/- shall cover the period with the month ending 31.10.2024. In case, the matter proceeds beyond October, 2024, the husband will be liable to pay the maintenance for those periods also. In the mean time, as the right of the husband to cross-examine the wife has been foreclosed and that is being set aside by this order, the husband will commence the cross-examination on 03.09.2024 and complete it by 06.09.2024. Thereafter, the other proceedings shall follow. This order is being passed in order to ensure that both the parties do not plead that they did not get an opportunity of being cross-examined or letting in their evidence before the Trial Court.



C.R.P.(PD).No.3059 of 2024

WEB COPY

25. When the Demand Drafts were tendered by Mrs.S.P.Arthi to Mr.N.Seshadri, he pleaded that though he made his arguments at length, he does not have the mandate to receive the Demand Drafts that have been handed over. Hence, the civil revision petitioner/husband is entitled to deposit the Demand Drafts taken by him to the credit of O.P.No.3852 of 2015 on the file of the VI Additional Principal Family Court at Chennai. On such deposit, the wife is entitled to withdraw the same, if she so desires, by filing a petition for withdrawal. If the wife files such a petition, Mrs.S.P.Arthi says that she will have “no objection” for the same.

26. In fine, this Civil Revision Petition stands allowed. The order, dated 06.07.2024 in I.A.No.5 of 2024 in O.S.No.3852 of 2015 on the file of the learned VI Additional Principal Judge, Family Court, Chennai is set aside since the husband has paid the arrears of maintenance as calculated by the wife till October, 2024. The learned Trial Judge is requested to give an opportunity to the parties as stated supra. No costs.

02.09.2024

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
grs



C.R.P.(PD).No.3059 of 2024

WEB COPY To

The VI Additional Principal Judge,
Family Court, Chennai.



WEB COPY



C.R.P.(PD).No.3059 of 2024

V.LAKSHMINARAYANAN, J.

grs

C.R.P.(PD).No.3059 of 2024

02.09.2024