



C.R.P.(PD).No. 3408 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

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THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3408 of 2024

&

C.M.P. No.18429 of 2024

R.Thirumalaivasan

...Petitioner

Vs.

A.Kala

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 08.09.2023 in I.A.No.1 of 2021 in H.M.O.P.No.3365 of 2017, by the V Additional Family Court, Chennai.

For Petitioner : Mr. M.Mohideen Pitchai



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ORDER

This Civil Revision Petition arises against the order passed by the V Additional Family Court, Chennai, in I.A.No.1 of 2021 in H.M.O.P.No.3365 of 2017.

2. H.M.O.P.No.3365 of 2017 has been presented by the petitioner seeking divorce invoking the provisions of Section 13 (1) (i a) and 13 (1) (i b) of the Hindu Marriage Act, 1955. On being served with the summons, the wife filed a detailed counter and the matter is pending adjudication. Being unable to maintain herself, the wife took out an application in I.A.No.1 of 2021 seeking maintenance at the rate of Rs.30,000/- per month and for a sum of Rs.25,000/- towards litigation expenses.

3. The wife would plead that her husband is working as an Air



Conditioning Mechanic and is earning about Rs.60,000/- per month. In addition, she would point out that the husband is having house properties in Injambakkam, Adyar and lands at Thathampalayam in Villupuram District. Over all she would calculate the husband's income at a sum of Rs.1,00,000/- per month.

4. Notice was ordered in the application and the respondent filed a counter.

5. The husband would state that the wife has already filed a maintenance case in M.C.No.315 of 2021. However, the counter affidavit is vague about his monthly income. It reads that the husband has got a major cyst in his stomach and he has been advised by the doctors not to do any heavy works including servicing of the air conditioners. Further, the husband is suffering from cervical spondylosis due to which he has been fainting on several occasions. However, he would admit that there is a property at Injambakkam and that other properties belong to his brother and not to him.



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6. He would plead that he is unable to maintain himself and therefore, he is at the mercy of his father and his brother. He would also plead that his wife and her mother were working in a chocolate manufacturing company. Therefore, he would plead for dismissal of the petition.

7. After a detailed enquiry, the learned Trial Judge came to the conclusion that the petitioner is earning about Rs.1,00,000/- per month. The learned Judge would also conclude that it is the duty of the husband to maintain the wife and therefore fixed an interim maintenance of Rs.15,000/- per month from 18.01.2021 onwards and also the litigation expenses at Rs.25,000/-. Aggrieved by the same, the present Civil Revision Petition.

8. Heard Mr.B.Vignesh, for Mr. S.Mohan, for the civil revision petitioner.



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9. Mr. B.Vignesh would submit that the petitioner / husband is suffering from health issues and is not in a position to work and hence the amount of maintenance fixed by the Court is excessive. He would also state that the wife is capable of earning and hence he would plead for admission of the revision and grant of interim order.

10. I have carefully gone through the records and considered the arguments of Mr. Vignesh.

11. At the outset, I should point out that the scope of this Court against an interim order of maintenance is very limited. This Court can interfere with the order only when the amount that has been fixed is exorbitant, arbitrary or capricious. In the present case, I am able to see that the petitioner is a resident of Adyar and the respondent is residing in the city of Chennai. A sum of Rs.15,000/- per month, which converts to Rs.500/- can neither be said to be excessive nor arbitrary.



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12. A perusal of the affidavit of assets and liabilities filed by the husband would show that he pleads “*Nil*” income. It is the duty of the husband to maintain the wife and it is on him to generate income for the purpose of maintenance of the wife. The petitioner has not come forward with true facts before the Court. He would concede that he is working as an AC mechanic. However, in the counter affidavit, he states that his income is “*Nil*”. This itself casts a huge doubt over his case. The order of the learned V Additional Family Judge, Chennai, is well reasoned and she has balanced the interest of the petitioner as well as the respondent.

13. I do not find any reason to interfere with the Order of the Trial Judge. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

28.08.2024

Index : Yes/No



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Internet : Yes/No
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To

The V Additional Family Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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