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C.R.P. No. 3710 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P. No. 3710 of 2024
and
C.M.P. No. 20129 of 2024

R.Karunamoorthy

... Petitioner / Petitioner /
Respondent / Appellant

Vs.

S.R.Deepthi

... Respondent / Respondent /
Petitioner / Appellant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order passed by the learned Principal District and Sessions Judge at Coimbatore on 21.06.2024 in M.P. No. 1 of 2024 in Crl. Appeal No. Unnumbered of 2024 in C.M.P. No. 8089 of 2022 in D.V.A. No. 59 of 2022 dated 08.01.2024 on the file of the Judicial Magistrate, Special Court to try Protection of Women from Domestic Violence Act.

For Petitioner : Mr. M.N.Balakrishnan

For Respondent : Mr. R.Balasubramanian



C.R.P. No. 3710 of 2024

ORDER

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This civil revision petition arises against the order passed by the learned Principal District and Sessions Judge at Coimbatore in M.P. No. 1 of 2024 in Crl. A. No. Unnumbered of 2024 dated 21.06.2024.

2. There is no dispute in the relationship between the parties. The civil revision petitioner is the husband and the respondent is the wife. Alleging that she had suffered domestic violence at the hands of the respondent/husband, the wife moved a domestic violence petition in D.V.A. No. 59 of 2022. After the husband entered appearance, the wife moved an application for interim maintenance under section 23(2) of the Domestic Act 43 of 2005. She pleaded that the respondent is a software engineer working with HCL in Chennai and earning a handsome sum as salary. She pleaded that she is unable to maintain herself and her child. She specifically alleged that she suffers from a cyst in her uterus and had to undergo treatment. The minor child is studying in Vels Vidyashram at Chennai. She alleged that she is paying a school fees of Rs.1,50,000/- per term and being unable to sustain the expenses, she moved the petition. She sought for Rs.30,000/- per month towards interim maintenance.

3. The respondent husband filed a counter and would curiously plead



C.R.P. No. 3710 of 2024

that if the child is handed over to him, it would have a better future than if the child is with the wife. The learned Magistrate by an order dated 08.01.2024 allowed the application for interim maintenance and ordered that the husband pay a sum of Rs.15,000/- per month. At the time of disposal, he took into consideration that the husband is earning about Rs.73,118/- per month.

4. Feeling aggrieved by the same, the husband preferred an appeal before the District and Sessions Judge invoking Section 29 of the Domestic Violence Act. The provision of law was wrongly given as Section 387 of the Code of Criminal Procedure. Since the appeal was out of time, he moved an application to condone the delay of 36 days in filing the appeal. The reason that was given is that there was a delay in receipt of the certified copies and hence he moved the application under Section 5 of the Limitation Act, 1963.

5. Notice was ordered in the application and the respondent entered an appearance.

6. The respondent contended that the petitioner has not explained every day's delay and that there is no *bona fide* in the case of the appellant. The learned Judge taking into consideration the aforesaid aspects including the fact



C.R.P. No. 3710 of 2024

that the petitioner is working as a technical lead in HCL, imposed a cost of Rs.1,00,000/- to condone the delay. She also granted liberty to the wife to withdraw the said amount. Feeling aggrieved by the same, the husband is on revision before me.

7. I heard Mr. M.N.Balakrishnan for the civil revision petitioner and Mr. R.Balasubramanian for the respondent.

8. On going through the papers, it is discernible that the learned Judge has condoned the delay on payment of cost. This amount represents the arrears of maintenance. For the mere fact that the husband has delayed the appeal does not mean that the wife should suffer without receiving maintenance. Therefore, I directed the civil revision petitioner / husband to come forward with a demand draft for a sum of Rs.1,50,000/- as a condition for issuance of notice in the revision. Mr. M.N.Balakrishnan produced a demand draft dated 12.09.2024 drawn on HDFC Bank for the aforesaid amount in demand draft No.001162.

9. Since the learned Judge has passed a conditional order and as the



C.R.P. No. 3710 of 2024

petitioner was not able to comply with the petitioner's request, the power under Section 148 of the Code of Civil Procedure is always available to a Court for extension of time to do complete justice between the parties. As Mr. M.N.Balakrishnan has handed over the draft for the enhanced amount of Rs.1,50,000/-, I am inclined to allow the revision. The learned Principal Districts and Sessions Judge at Coimbatore is requested to number the appeal and, subject to the exigencies of her diary, dispose of the appeal on or before 31.12.2024.

10. It is made clear that the liability of the husband to pay Rs.15,000/- per month as maintenance pending the appeal will not be inhibited in any way on account of the payment of Rs 1,50,000/-.

11. In the result, the civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

03.10.2024

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



C.R.P. No. 3710 of 2024

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1. The Principal District and Sessions Judge at Coimbatore.
2. The Judicial Magistrate,
Special Court to try Protection of Women from Domestic Violence Act,
Coimbatore.



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C.R.P. No. 3710 of 2024

V.LAKSHMINARAYANAN, J.,

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C.R.P. No. 3710 of 2024

03.10.2024