



C.R.P.(PD).No. 3418 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. 3418 of 2024

&

C.M.P. No.18503 of 2024

K.Sekar

...Petitioner

Vs.

S.Sumathi

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 28.03.2024 in I.A.No.2 of 2023 in H.M.O.P.No.3830 of 2017 on the file of the VII Additional Family Court, Chennai.

For Petitioner : Mr. S.Thirumavalavan



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ORDER

This Civil revision Petition arises against the order of the VII Additional Family Court, Chennai in I.A.No.2 of 2023 in O.P.No.3830 of 2017 dated 28.03.2024.

2. There is no dispute in the relationship between the parties. The civil revision petitioner is the husband and the respondent is the wife. They both married on 26.06.1998. From the wedlock, they have two children, one boy and one girl, aged about 20 and 22 respectively. Pleading that the petitioner has suffered at the hands of the respondent, he initiated H.M.O.P.No.3830 of 2017 seeking divorce under Section 13 (1) (i - a) and 13 (1) (i - b) of the Hindu Marriage Act. The wife has filed a counter. Pleadings have been completed and the parties have given their evidence.



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3. At that stage, the wife being unable to maintain herself, took out an application in I.A.No.2 of 2023. The records would show that she has also initiated M.C.No.383 of 2022, which is also pending on the file of the Family Court, Chennai. It is her case that her husband is earning about Rs.1,00,000/- per month and therefore sought for maintenance for herself at the rate of Rs.30,000/- per month and for Rs.25,000/- towards litigation expenses.

4. During the course of enquiry, the husband has filed his income tax certificates as well as the affidavit of assets and liabilities as directed by the Supreme Court in case of ***Rajnesh vs Neha and another - AIR 2021 (SC) 569***. A perusal of the affidavit of assets and liabilities would show that the husband is getting an income of Rs.95,531.46/- per month. He would plead that after several deductions, he is getting a sum of Rs.15,000/-. He would also plead



that he has spent Rs.1,20,000/- on the education of the children.

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5. The learned Judge after perusal of the affidavit of assets and liabilities filed by the husband came to the conclusion that the wife will be entitled for a maintenance of Rs.10,000/- per month, from the date of filing of the Section 24 petition by the wife. Aggrieved by the same, the present Civil Revision Petition is filed.

6. Heard Mr.S.Thirumavalavan, for the civil revision petitioner.

7. Mr.Thirumavalavan would contend that the petitioner is suffering from cancer and is unable to maintain himself. He would plead that the breakup of the details has not been given in the litigation expenses and further the affidavit of assets and liabilities as required by ***Rajnesh vs Neha and another - AIR 2021 (SC) 569*** was



not filed by the wife. Therefore, he would plead that the matter requires admission and prayed for interim orders.

8. I have carefully gone through the records and considered the arguments of Mr.Thirumavalavan.

9. The scope of revision under Article 227 of the Constitution of India in matters arising against interim maintenance is limited. The learned Trial Judge has granted a sum of Rs.10,000/- per month as maintenance, which works out to a sum of Rs.300/- per day. The Court can interfere with the quantum of maintenance if it finds the amount that has been fixed by the Court is excessive, arbitrary or capricious. I do not find any of those vices existing in the order.

10. Apart from that, since the wife has not filed her affidavit of



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assets and liabilities does not mean that she is not entitled to maintenance at all. On the contrary, in the Judgement of ***Rajnesh vs Neha and another - AIR 2021 (SC) 569***, the Supreme Court had held that it is the sacrosanct duty of the husband to maintain the wife. For the procedural mistake of having not filed an affidavit of assets and liabilities, the husband cannot deny maintenance to the wife. The relationship is admitted and the fact that the wife is not in a position to maintain herself has been found by the Court below.

11. In the light of the above discussion, I do not find any reason to interfere with the order passed by the learned VII Additional Judge, Family Court, Chennai. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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To

The VII Additional Judge,
Family Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

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