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C.R.P.No.3793 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3793 of 2024
and C.M.P.No.20778 of 2024

Beno John Petitioner

-Vs-

Bindu Varghese @ Bindu Beno Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.265 of 2019 in O.P.No.599 of 2018 dated 22.09.2022 on the file of the II Additional Family Court, Chennai.

For Petitioner : Mr.A.K.Sriram
for M/s.A.S.Kailasam Associates

ORDER

This Civil Revision Petition is at the instance of the husband. He presented O.P.No.599 of 2018 under Section 10(1)(ix) and 10(1)(x) of the Indian Divorce Act, 1869. The petitioner solemnized his wedding with the respondent on 27.01.2011. From the wedlock, a female child was born on 30.01.2012. Alleging that the wife has a compulsive obsession of following a certain person and as that she had threatened to kill the petitioner's mother and other similar allegations of cruelty, he



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presented the aforesaid O.P.

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2. The wife entered appearance and has filed a detailed counter. Thereafter, she took out an application in I.A.No.265 of 2019 invoking Section 36 of the Indian Divorce Act. She would plead that the husband is earning substantial monies, whereas she is earning only a sum of Rs.12,000/- per month as a teacher in Chennai Public School and is finding it very difficult to eke out a living. She sought for interim maintenance of Rs.75,000/- per month.

3. To this application, the petitioner husband filed a detailed counter stating that the wife has made a demand for maintenance four years after she left the matrimonial home and that he is spending considerable amounts towards the education of the child. He would plead that the alleged expenses towards house rent and miscellaneous expenses given by her in the affidavit have not been demonstrated with any proof. Pending the application for maintenance, the respondent wife, who was a resident of Chennai shifted her residence to Bangalore. She also left her employment with Chennai Public School and secured an appointment with 'The Foundation School', Thippasandra, Bangalore. She enrolled the child in the said institution.

4. The learned Judge received the affidavit of assets and liabilities from the parties. Taking into consideration the status of the parties, the learned Judge fixed a sum of Rs.35,000/- as interim maintenance to the wife. He further granted a sum



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of Rs.25,000/- towards litigation expenses.

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5. Aggrieved by the said order, the husband preferred an appeal before this Court in C.M.A.No.26 of 2023. By an order dated 10.01.2023, this Court granted interim stay of the order of maintenance on the condition the husband pays the arrears of maintenance at the rate of Rs.15,000/- per month and continues to pay the said amount till the disposal of the appeal. On account of the change in law regarding the maintainability of an appeal as against interim order of maintenance, the appeal stood dismissed. Hence this revision at the instance of the husband.

6. Heard Mr.A.K.Sriram, learned Senior Counsel for M/s.A.S.Kailasam Associates for the petitioner. Mr.Sriram argued that,

- (a) The wife has not produced certificates to prove that she is paying fees to 'The Foundation School' for the education of the child. He asserts that being the child of a teacher, the fees that is paid by the respondent wife, is substantially less than what would be paid by a student otherwise.
- (b) He would argue that out of a sum of Rs.75,000/- that he receives as Chief Executive Officer (CEO) of MBF Digital Productions, he pays an income tax of Rs.10,000/- and his take home salary is Rs.65,000/- per month.



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(c) In addition, he would plead that he has paid the school fees of the child for the academic year 2018-19 and is incurring a housing loan of Rs.25,000/- per month.

(d) In all, Mr.Sriram states that his client gets only Rs.40,000/- in his hand and directing him to pay Rs.35,000/- is excessive.

7. I have gone through the records and considered the submissions of Mr.A.K.Sriram.

8. On being asked as to the stage of the proceedings, Mr.Sriram stated that the O.P. itself has been posted for arguments and that submissions on the Divorce petition itself have been made. He would state that it is currently listed for arguments on behalf of the wife.

9. The fact that the child is studying in the Foundation School is not in dispute. The respondent wife has produced a certificate to show that she is incurring a sum of Rs.2,16,000/- for the academic year 2021-22. From the academic year 2019-20 to the academic year 2023-24, it is the wife who has been bearing the financial costs involved in the education of the child. She has produced her salary certificate to show that she is drawing a sum of Rs.36,500/-. Comparing the two figures, it is evident that the wife, with a great difficulty, from



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paltry sum of Rs.36,500/- has been educating the child in a premier institution incurring heavy costs. A perusal of the affidavit shows that her brother, at some point of time, seems to have helped her in getting over the financial difficulties. Unfortunately, her brother has gone to meet his maker, leaving her without any support.

10. Taking into consideration the fees that has been paid by the respondent wife as well as the fact that they are residing in the metropolitan city of Bangalore, I do not think a sum of Rs.35,000/- is expensive. This is more so because the status of the parties would have to be taken into consideration while fixing the maintenance. The husband is in the position of CEO and I am certain if the husband and wife and the child were residing under one roof, he would have certainly be spending more than the sum of Rs.35,000/- that has been fixed by the Court. This is the view taken by the Delhi High Court in **Bharat Hegde -Vs- Saroj Hegde (AIR 2007 Delhi 197)**. I should add here that the view of the Delhi High Court gained acceptance at the hands of the Supreme Court in **Rajnesh -Vs- Neha and Another (2021) 2 SCC 324**.

11. At this stage, Mr.Sriram would point out that as per the orders of the Division Bench in C.M.A.No.26 of 2023 dated 10.01.2023, the husband paid a sum of Rs.10,05,000/- towards arrears of maintenance from September 2019 to April 2024. For the balance of amount of Rs.16,45,000/-, the wife has initiated an



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execution petition in E.P.No.72 of 2024.

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12. If the husband pays the amounts as fixed by the Family Court within a period of four weeks, the necessity to proceed further with the execution would not arise.

13. In the light of the above discussion, since the proceedings are at an advanced stage and as I do not find the amount excessive considering that the husband is a CEO of a private limited company and as the school in which the child is being educated is an expensive one, this Civil Revision Petition stands dismissed with the following observations. No costs. Consequently, connected miscellaneous petition is closed.

- The order of the learned II Additional Judge, Family Court, Chennai in I.A.No.265 of 2019 in O.P.No.599 of 2018 dated 22.09.2022 stands confirmed.
- The petitioner husband is granted four weeks time to clear the arrears less the amount of Rs.10,05,000/- that he has already paid pursuant to the order of this Court in CMA No.26 of 2023.
- The learned II Additional Judge, Family Court, Chennai, on being satisfied that the arrears has been cleared, shall proceed further to hear the arguments and dispose of O.P.No.599 of 2018 on or before 30.11.2024.

26.09.2024



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Index : Yes/No

Neutral Citation : Yes/No

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V. LAKSHMINARAYANAN, J.

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To

The II Additional Judge
Family Court, Chennai.

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