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C.R.P.No.4410 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4410 of 2024
and C.M.P.No.24512 of 2024

Yogeswaran

.. Petitioner

Versus

Iswariya

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 12.08.2024 made in I.A.No.1 of 2023 in HMOP. No. 715 of 2022 on the file of the Subordinate Judge, Alandur.

For Petitioner : Mr.CH.Mohith Sai

ORDER

This civil revision petition arises against the order of the learned Subordinate Judge at Alandur in I.A.No.1 of 2024 in HMOP.No.715 of 2022.

2. HMOP.No.715 of 2022 has been presented by the civil revision petitioner seeking for divorce on the ground of cruelty. The petitioner



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married the respondent on 08.09.2019. From the wedlock, a child was born on 15.01.2022. Due to disputes and difference, the parties have separated and they are now before the Sub Court at Alandur.

3. On being served with summons, the wife has filed a detailed counter denying the allegations made by the husband. Thereafter, she took out an application under Section 24 of the Hindu Marriage Act seeking interim maintenance of Rs.50,000/- i.e., Rs.25,000/- for herself and Rs.25,000/- for the child and the litigation expense of Rs.50,000/-. This application was received as I.A.No.1 of 2023.

4. The plea of the wife is that the civil revision petitioner is employed as an executive at BNP Paribaa at Chennai and is drawing an income of Rs.1,00,000/- per month. Apart from this income from salary, she pleaded that the husband owns a property at No.8, Janaki Raman Nagar, Perungudi, Chennai. From that property, which is a three storey structured building, he is getting an additional income of Rs.1,50,000/- per month. She further pointed out that the husband has agricultural land at Marungapallam village



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in Thanjavur District, from which he is generating a handsome agricultural income.

5. The husband filed a counter stating that it was the respondent/wife who left the matrimonial home on her own accord taking away all the jewels. He further pleaded that despite his fervent attempts to see the child, the wife was keeping the child away from him. He denied that he is working in BNP Paribas and also about other properties, which has been set forth above. He pleaded that he is unemployed and has no source of income and in fact, having food only once a day.

6. The learned Trial Judge, after an analysis of the affidavit and petition, came to a conclusion that the husband should pay a sum of Rs.20,000/- per month as interim maintenance for both the wife and child. He also ordered litigation expenses of Rs.30,000/- instead of Rs.50,000/- that had been sought for by the wife. He also granted time to pay the arrears of amount as calculated by him. He further directed that the husband will not be in a position to prosecute the main petition for divorce, unless and until, the arrears of maintenance are paid. Aggrieved by the same, the present civil revision petition.



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7. I have heard Mr.CH.Mohith Sai for the civil revision petitioner.

8. Mr.CH.Mohith Sai, taking me to the order, pleads that the wife is not entitled to maintenance on the following grounds:

(i) she is highly educated and a degree holder, and therefore is capable of earning monies by herself.

(ii) it was the wife who had deserted the husband and went separately after removing her 'Thali' and giving it to the husband and therefore, it shows that the wife is not interested to live with the husband.

(iii) the respondent's father is possessed of sufficient funds and therefore, to demand of money from the husband has maintenance is untenable.

9. I have carefully considered the submission of Mr.CH.Mohith Sai and have gone through the records.

10. The wife pleads that the husband is working in BNP Paribas and is earning a sum of Rs.1,00,000/-. To this, not unusually, the husband takes



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a ground that he is living in abject poverty and is only having food once a day. When the relationship is admitted and when the marriage has resulted in birth of a minor child, who is aged about two years, the husband cannot shirk his responsibility.

11. In ***Rajnesh v. Neha and another, (2021) 2 SCC 324***, the Supreme Court has clearly and categorically laid down that it is a sacrosanct duty of the husband to maintain his wife and child.

12. Insofar as the first plea of Mr.CH.Mohith Sai that the petitioner is educated and therefore, she is capable of earning is concerned, the weight of authorities are against the said proposition. Under section 24 of the Hindu Marriage Act, all that the wife has to show before the Court is that, she is not earning income sufficient to maintain herself. The fact that she is educated or uneducated is irrelevant. The duty of the husband to maintain the wife continues, even if she is highly educated. It would be highly unusual that a person, who is educated and working in good position in a Multinational company, to marry a person who is uneducated. The petitioner obviously would have sought the hand of the respondent only on



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account of her education. Hence, that cannot be put against her in order to deny her maintenance.

13. The second point that the wife had left the matrimonial home on her own accord and hence, not entitled to maintenance also is not a ground under Section 24 of Hindu Marriage Act. Perhaps, it can be considered as a ground under Section 125 of the Code of Criminal Procedure. The Parliament, which made both legislations, did not incorporate this bar, placed for maintenance under the Code of Criminal Procedure, in Hindu Marriage Act. Therefore, the fact that the wife was at fault, which resulted in separation between the parties, is a ground to be urged at the time of final disposal and secure an order of divorce. It is certainly not a ground to reject the claim of maintenance made by the wife.

14. The last point I find is an extremely a humorous one. The fact that the father's wealthy does not mean that the husband need not maintain his wife.



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15. In the light of the above discussion, I have no hesitation in confirming the order passed by the learned Subordinate Judge at Alandur. Accordingly this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

16. Since the civil revision petitioner was pursuing this revision, eight weeks time is granted to clear the arrears. In case the arrears are not cleared, the learned Subordinate Judge, Alandur is requested to enforce clause 6(e) of the impugned order.

05.11.2024

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

To

The Subordinate Judge, Alandur



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V.LAKSHMINARAYANAN, J.

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