



C.R.P.(PD)No.4539 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4539 of 2024
and CMP No.25280 of 2024

G.R.Surendar

... Petitioner

VS

Mrs.Lavanya

.... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 04.07.2024 in I.A.No.46 of 2023 in HMOP No.105 of 2022 on the file of Sub Court, Neyveli.

For Petitioner : Mr.S.Shankar

ORDER

The civil revision petition challenges the order passed by the Subordinate Judge, Neyveli in I.A.No.46 of 2023 in HMOP No.105 of 2022 dated 04.07.2024.



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2. The civil revision petitioner is the husband. There is no dispute in the relationship between the parties. They entered into matrimony on 05.06.2017 at Cuddalore. Due to disputes and differences, the parties have separated. Thereafter, the wife initiated H.M.O.P.No.105 of 2022 on the file of Subordinate Court, Neyveli, seeking for divorce.

3. Pending such proceedings, respondent/wife filed an application in I.A.No.46 of 2023, seeking for interim maintenance. She pleaded that the husband is a highly educated gentleman, an Engineering Graduate and also a Master in Business Administration. She also stated that her husband is working in Larsen and Toubro Constructions Limited, Manapakkam and drawing a sum of Rs.1,80,000/-per month. He is working in a M1B Grade post. She sought for interim maintenance of Rs.50,000/- per month and Rs.80,000/- as litigation expenses.

4. The learned Sub Judge ordered notice in the application and received counter of the husband.



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5. The revision petitioner/husband pleaded that the requirements of Section 24 of the Hindu Marriage Act, 1955 are not satisfied. He is drawing a sum of Rs.70,000/- and apart from that he is paying E.M.Is for the personal loans and car loan that have been taken by him.

6. Both the parties did not enter into the witness box and tender evidence. On a consideration of affidavit and petition, the learned trial Judge came to a conclusion that the wife would be entitled to Rs.20,000/- per month as maintenance and ordered Rs.30,000/- as litigation expenses. Aggrieved by the said order, the respondent/husband is on revision.

7. I heard Mr.S.Shankar for the civil revision petitioner.

8. Mr.S.Shankar pleads that the order of maintenance of Rs.20,000/- is excessive on the following grounds:-

(i) The husband is having aged parents who are



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suffering from heart ailment for whom he has to spend money to take care of their health;

(ii) His wife is M.Tech graduate and she is capable of earning money;

(iii) Husband is paying huge money in EMIs and therefore, he is not in a position to pay a sum of Rs.20,000/- to his wife and

(iv) Finally he points out that Section 24 of the Hindu Marriage Act, 1955 is inapplicable when the wife is capable of generating income.

9. I have carefully considered the submissions of Mr.S.Shankar and gone through the records.



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10. The fact that the husband is taking care of his parents does not mean that he should not take care of his wife. The interest of the parents is not mutually exclusive when it comes to the interest of the wife. In fact, as the income generator of the family, it is the duty of the husband to take care of his wife, his parents and children, if any. Fortunately, in this case, there are no issues from the matrimony. The husband's duty/obligation to take care of his wife financially, remains. Therefore, I am not in a position to agree with the first submission of Mr.S.Shankar that as the petitioner is taking care of his parents, he need not take care of his wife. This position has been well settled in the judgment of ***Rajnesh vs Neha and another* 2021 2 SCC 324**. The Supreme Court has made it clear that it is the sacrosanct duty of a husband to maintain his wife and child. Therefore I need not labour on the said preposition any more.

11. With respect to the plea that the wife is capable of earning and therefore, she is not entitled for maintenance, I have to refer to Section 24 of the Hindu Marriage Act, 1955. Under Section 24, Parliament has not said that



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an educated person is not entitled to file an application for maintenance. For the purpose of maintenance, it has to be proved that the wife has no independent income sufficient for her support.

12. In the present case, the wife has filed an affidavit that she does not have any independent income. No evidence has been tendered by the husband to show that the wife is generating income. If that be the situation, the requirement of Section 24 of the Hindu Marriage Act stands satisfied. If I were to agree with Mr.S.Shankaran that an educated person or a person capable of generating income is not entitled under Section 24 of the Act, I would be amending such section. Such powers, unfortunately, is not available with me.

13. Once the relationship is admitted and the wife pleads that she does not have any independent income, it is the duty of the husband to ensure that his the wife is maintained in order to get over the vagaries of litigation.

14. In *Sh.Bharath Hegde vs Smt.Saroj Hegde AIR 2007 Delhi 197* it was held **that** while fixing quantum of maintenance, the Court has to take into



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consideration the status and the standard of living in which the parties are positioned. In fact, it further directed that the Court must grant maintenance at the same level which the wife would have been entitled to receive had the matrimony continued.

15. The husband is admittedly a Manager at the prestigious L&T, and his basic pay itself running to Rs.70,000/-. This amount does not include the Dearness Allowance and other perquisites that the husband would be receiving from his employer. As the wife of a Manager in a Multinational Company, I am sure that the husband would have been expending more than a sum of Rs.20,000/- had the wife continued in the martial home. Further, if the issue of priority is to be decided between EMI's paid to third parties and maintenance of the wife, I am of the view the latter prevails.

16. In the light o the above discussions, none of the pleas that have been raised by Mr.S.Shankar arise for consideration.

17. At this stage, Mr.S.Shankar brought to my notice that wife had taken



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out an application in I.A.No.1 of 2024 to strike off the defence. He adds though the learned Subordinate Judge was informed that this revision is going to be heard today, the learned Judge has struck off the defence. Hence Mr.Shankar pleads that sufficient time may be granted for clearing the arrears and to continue to pay the arrears pending the HMOP.

18. I find the request is extremely reasonable. Eight weeks time is granted to the civil revision petitioner to clear the arrears as fixed in I.A.No.46 of 2022 dated 04.07.2024. The fact that eight weeks time is granted does not mean that the husband does not pay the maintenance amount of Rs.20,000/- for the months of November and December 2024.

19. In case the amount of arrears is paid within the time fixed by this Court, the learned Judge is required to restore the defence of the civil revision petitioner and dispose of HMOP No.105 of 2022 on merits.

20. I have to add a caveat here in case, the husband defaults during the litigation or fails to clear the arrears, absolute discretion is given to the learned



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subordinate Judge to strike off the defence once again.

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21. The order passed by the learned Subordinate Judge is obviously dependent on the order passed in I.A.No.46 of 2023. Since this Court granting time for payment of arrears, the learned Judge will await till the time granted and even thereafter, if the husband does not pay the amount, the order will revive.

22. With the above observation, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

18.11.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
sr

To

The Subordinate Judge, Neyveli

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V.LAKSHMINARAYANAN,J.,

SI

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