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C.R.P.No.3772 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3772 of 2024
and
C.M.P.No.20593 of 2024

K.Devarajan

..Petitioner

Vs.

N.Shanthana Nangai

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 23.08.2024 passed by the learned Judicial Magistrate, Sriperumbudur, in CMP SR No.8321 of 2024 in D.V.No.8 of 2022.

For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.K.G.Senthilkumar

ORDER

This Civil Revision Petition arises against the order passed by the learned Judicial Magistrate at Sriperumbudur in un-numbered C.M.P.Sr.Nos.8320 and 8321 of 2024 in D.V.C.No.8 of 2022.



C.R.P.No.3772 of 2024

WEB COPY

2. The civil revision petitioner is the husband. He is a medical Doctor currently working at Government Primary Health Centre, Pettavaithalai in Tiruchirappalli. The respondent wife has initiated a proceeding invoking the provisions of the Protection of Women from Domestic Violence Act, 2005.

3. The husband entered appearance and has filed a detailed counter opposing the said petition. Pending proceedings, he pleaded that since he is a diabetic and has undergone split skin grafting in his right leg, he is not in a position to present himself in person and therefore filed an application seeking for permission of the Court to appear through Video Conferencing. The said application came to be dismissed by the trial Court and consequently the Court closed the evidence of the civil revision petitioner husband on 19.07.2024.

4. Thereafter, the petitioner was transferred from Mangadu to Tiruchirappalli. Hence, he filed a fresh set of applications seeking for the relief to reopen the evidence as well as to record evidence through Video



C.R.P.No.3772 of 2024

Conferencing. The applications was dismissed by the learned Judge even at the numbering stage. Hence, the revision.

5. When the matter came up for admission on 18.09.2024, I informed Mr.S.Sathia Chandran, that if the husband is capable enough to obey the order of transfer passed by the Government, he certainly can appear before the Court to tender evidence. Mr.S.Sathia Chandran, learned counsel on instructions would submit that his client will appear on 03.10.2024 and 04.10.2024 for the purpose of recoding his evidence. Unfortunately, by the time the revision can be taken up, those two dates have gone by.

6. On notice been served Mr.K.G.Senthil Kumar, learned counsel has entered appearance for the respondent wife.

7. I heard Mr.S.Sathia Chandran, learned counsel for the civil revision petitioner and Mr.K.G.Senthil Kumar, learned counsel for the respondent.



C.R.P.No.3772 of 2024

8. In terms of the judgment of the Full Bench of this Court in ***Arun Daniel Vs. Suganya*** reported in ***2022 SCC OnLine Mad 5435***, the proceedings under Section 12 read with Sections 18 to 23 of the Protection of Women from Domestic Violence Act is civil in nature. It obtains a criminal colour only after the orders are passed by the Magistrate and the same are disobeyed by the respondent. This is as per Section 31 of the said Act.

9. As long as the proceedings are pending trial, sufficient opportunity must be given to the petitioner wife and the respondent husband in order to place their respective cases before the Court. The husband, considering the physical sufferings that he is undergoing, wanted to record the evidence before the Court through Video Conferencing. He did not avoid appearance before the Court. He only wanted the convenience of recording the evidence as he has undergone split skin grafting of his right leg. The Court had rejected the said petition and closed the evidence of the civil revision petitioner. Such a course of action would put the husband to irreparable prejudice, as there will be no evidence on his side for the learned Judge to consider the case.



C.R.P.No.3772 of 2024

WEB COPY

10. Therefore, in the interest of justice, the evidence that has been closed by the Court on 19.07.2024 is to be reopened. At the same time, the petitioner having obeyed the order of transfer cannot plead that his split skin grafting will stand in his way to appear before this Court. If he is fit enough to travel from Mangaudu to Pettavaithalia and further fit enough to carry on his duties, he can certainly be fit enough to appear before the Court and tender evidence.

11. Mr.S.Sathia Chandran and Mr.K.G.Senthil Kumar state that the matter is listed on 06.11.2024 awaiting orders of this Court in this revision. On 06.11.2024, the civil revision petitioner husband shall be present before the learned Judicial Magistrate at Sriperumbadur. He shall tender his evidence in chief and present himself for cross examination.

12. Mr.K.G.Senthil Kumar assures this Court that he will cross-examine the husband on the very same day and if necessary on the subsequent day.

13. In the light of the above, while confirming the order passed by



C.R.P.No.3772 of 2024

the learned Judicial Magistrate, Sriperumbadur dated 23.08.2024, the learned Judicial Magistrate is directed to reopen the evidence of the civil revision petitioner husband and record his chief examination on 06.11.2024 and permit the learned counsel for the respondent wife to cross-examine him on that day and on the subsequent day, if a request is made on that behalf. The proceedings in D.V.C.No.8 of 2022 shall be disposed of on or before 30.11.2024 and an intimation to this Court in compliance of this order shall be made.

14. This Civil Revision Petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

04.10.2024

dsa

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

Speaking order / Non-Speaking order



C.R.P.No.3772 of 2024

To

The Judicial Magistrate,
Sriperumbudur.



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C.R.P.No.3772 of 2024

V.LAKSHMINARAYANAN,J.

dsa

C.R.P.No.3772 of 2024

04.10.2024