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C.R.P.(PD).No.3821 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3821 of 2024
and C.M.P.No.20970 of 2024

Shruthi Thilak

.. Petitioner

Versus

Prabhu Thilaak

.. Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.6 of 2024, dated 04.06.2024 and to direct the III Additional Principal Family Court at Chennai, to first hear and dispose the petitioner's application in I.A.No.6 of 2024 in a time bound manner, before proceeding with any further hearing in O.P.No.1320 of 2023.

For Petitioner : Mr.M.S.Niranjhan

For Respondent : Mr.C.Vigneshwaran,
for Mr.E.Bala Murugan

ORDER

Heard Mr.M.S.Niranjhan, learned Counsel for the civil revision petitioner and Mr.C.Vigneshwaran, learned Counsel for Mr.E.Bala Murugan, learned Counsel for the respondent.



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2. This Civil Revision Petition arises against the order passed by the III Additional Principal Family Court, Chennai in a memo filed by the respondent herein in I.A.No.6 of 2024 in O.P.No.1320 of 2023, dated 04.06.2024.

3. There is no dispute in the relationship between the parties. The civil revision petitioner married the sole respondent on 24.10.2007. From the wedlock, two children were born on 14.07.2008 and 03.02.2015 respectively. Subsequently, the parties separated. Alleging that the wife had indulged in the act of cruelty and had voluntary sexual intercourse with respondent Nos.2 to 4 in the Original Petition during the subsistence of the marriage, the respondent filed the above Original Petition. A counter-affidavit was presented by the petitioner herein denying all the allegations. Thereafter, the parties went for trial.

4. During the pendency of the proceedings, the wife presented an application in I.A.No.6 of 2024 seeking for interim maintenance. A counter-affidavit was also presented by the respondent herein in the said



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application. When the matter was taken up for enquiry, a memo seems to have been filed by the respondent stating that as he alleged that the wife is living in adultery, the Interlocutory Application must be disposed of along with the main Original Petition. For this proposition, the respondent placed reliance upon the judgment of a Division Bench of this Court in ***Perumal Vs. Saraswathi, C.M.A.No.3126 of 2019***, dated 03.02.2021. The memo was opposed by the civil revision petitioner stating that the disqualification under Section 125 of the Criminal Procedure Code, 1973 and Section 25 of the Hindu Marriage Act, 1955 will not apply to interim maintenance under Section 24 of the Act.

5. After hearing both the sides, the learned Trial Judge took a view that the interim maintenance application and the main Original petition would be taken up together and ordered the memo. Aggrieved by the same, the wife is on the revision.

6. Before I go into the merits of the case, an analysis of the two legislations namely, the Hindu Marriage Act, 1955 and the Code of Criminal Procedure, 1973 is required. There are provisions under the Hindu



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Marriage Act, 1955 which speak about grant of maintenance *pendente lite* and grant of permanent alimony. While dealing with an application under Section 24 of the Hindu Marriage Act, 1955, a Court has to see whether the spouse, who is seeking for maintenance, is having independent income sufficient to maintain herself or himself and to contest the proceedings. In case, the Court comes to a conclusion that the petitioner/spouse does not have independent source of income sufficient to maintain himself or herself nor is possessed of sufficient funds to continue litigation, then, the Court necessarily would have to order interim maintenance. The amount of maintenance is, of course, at the discretion of the Court and it would depend upon the status and station of the respective parties. I need not labour myself on this proposition because the same has been settled by the Supreme Court in ***Rajnesh Vs. Neha and Anr., (2021) 2 SCC 324.***

7. In stark distinction to the distressing circumstances which alone matters for Section 24 of the Act, if I were to look at Section 25 which speaks about permanent alimony and maintenance, a Court has to take into consideration "conduct of the parties" as well as other circumstances of the case. In fact, the specific words that the wife is living in adultery being a



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bar for grant of maintenance, which is found under Section 125(4) of the Code of Criminal Procedure, are absent in the Hindu Marriage Act, 1955.

The Court can, of course, if at the time of final disposal of the Original Petition, finds that the wife is living in adultery, it might be a ground but it is not necessary in all cases and depending on the circumstances of each case, it deny permanent alimony to the wife. For the mere allegation made by the husband that the wife is living in adultery or had voluntary intercourse with the persons other than himself during the subsistence of marriage, is not a ground to deny maintenance under Section 24 of the Act.

8. Mr.C.Vigneshwaran would rely upon C.M.A.No.3126 of 2019. A careful perusal of the judgment would show that the attention of the Bench had not been drawn to **Rajnes***h*'s case (cited *supra*) or to the fact that there is a difference between Section 125(4) of the Code of Criminal Procedure, Section 25 of the Hindu Marriage Act, 1955 and Section 24 of the said legislation.

9. The Parliament, which enacted the Code of Criminal Procedure in the year 1973, had also amended the Hindu Marriage Act, 1955



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subsequently, by bringing in the words "the conduct of the parties and other circumstances of the case" in the year 1976. Though the parliament was aware that it had made the amendment to the Code of Criminal Procedure and had inserted the disability of a spouse living in adultery in the year 1973, the said words were not brought into Section 24 of the Hindu Marriage Act. This shows that the allegation made by the husband, as against the wife, should not be a ground for denial of maintenance of the wife. When the Parliament had not brought in these aspects as disqualifications for maintenance under Section 24, I am afraid a Court cannot by interpretation, judicially, amend the statute.

10. As pointed out above, the only consideration that the Court would have to see is the sufficiency of income and the inability of the petitioning spouse to pay the litigation expenses. The purpose of maintenance is to ensure that a wealthy petitioner does not take advantage of the financial inability of the respondent and thereby, force the latter to concede to a decree. It is the duty of the Court to ensure that the parties are at even placed at the time of disposal of the petition. I am able to visualise a situation where the wife, who is living in poverty due to financial distress,



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might readily agree to the terms which the husband would dictate. If the Court were to fall into the trap laid out by the husband by making allegations of adultery and denying the wife's interim maintenance, then the playing field would certainly not be levelled and it would be skewed in favour of the husband. These observations are being made in order to point out to the difference under Section 24 on one hand and Section 25 of the Hindu Marriage Act, 1995 and Section 125 of the Code of Criminal Procedure on the other. I can also usefully take note of the judgment of the Supreme Court in *Amarjit Kaur Vs. Harbhajan Singh*, (2003) 10 SCC 228.

11. When a judgment of the Supreme Court is pitted against one of a Division Bench judgment of this Court which has not discussed the scope and nature of the provision, I am duty bound to follow the view taken by the statute and the verdict of the Supreme Court. Since the Division Bench did not refer to the provisions nor to the applicable judgment of the Supreme Court, I am not in a position to apply the said judgment to the facts of this case as a precedent.



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12. If, as argued by Mr.C.Vigneshwaran, the Interlocutory Application for maintenance in the main divorce petition were to be tried together, then, the Court would never have the opportunity to apply the aforesaid procedure developed by the Court in order to enforce its orders on maintenance.

13. The learned Judge shall first dispose of the application in I.A.No.6 of 2024. After the order copy is served on the parties and after sufficient time is granted to the parties to agitate the order in revision, if they so desire, the learned Judge shall proceed to take up the main Original Petition for disposal. I am giving this direction because, in case the Court comes to a conclusion that the husband is liable to pay maintenance to the wife, he should be given sufficient time to clear the arrears so as to enable him to proceed further with the petition. This is because, in case, the husband defaults in payment of maintenance, the wife is entitled to or the Court may *suo moto* strike of the defence of the husband or dismiss the divorce petition for non-payment of maintenance.



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14. In the light of the above discussion, this Civil Revision Petition stands allowed. The order passed by the learned III Additional Principal Family Court at Chennai in memo in I.A.No.6 of 2024 in O.P.No.1320 of 2023, dated 04.06.2024 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2024

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

To

The III Additional Principal Family Court,
Chennai.



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V.LAKSHMINARAYANAN, J.

grs

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