



CRP.No.3499 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3499 of 2019

Balamurugan @ Ashok
Petitioner

...

Vs.

Sinduja

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the decree and order of the learned Family Court Judge, Karaikal dated 09.05.2019 in IA.No.90 of 2018 in M.O.P.No.8 of 2015.

For Petitioner : Mr.R.Sunilkumar

For Respondent : Mr.C.Munusamy



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CRP.No.3499 of 2019

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below directing the petitioner to provide alternative accommodation to the respondent as available in matrimonial house.

2. The petitioner and the respondent are the husband and wife. The marriage between them had taken place on 04.03.2012. According to the petitioner, she voluntarily left the matrimonial house on 03.01.2013. Thereafter, the petitioner filed a divorce petition in MOP.No.8 of 2015 on the ground of cruelty. The said petition was filed on 02.12.2013. Pending said application, the respondent filed a petition under Section 24 of the Hindu Marriage Act, seeking interim maintenance and the same was ordered on 01.02.2017 by directing the respondent to pay a sum of Rs.5,000/- per month. Immediately, thereafter, the respondent herein filed the present petition seeking residential right in IA.No.90 of 2018. Though the present petition has been filed under Section 21 of the Hindu Marriage Act, the Court below treated it as the one filed under Section 19 of the Domestic Violence Act and



CRP.No.3499 of 2019

passed impugned order by directing the petitioner to secure an alternative accommodation as available in the matrimonial house. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that salary of the petitioner is only Rs.14,220/- and he has been directed to pay interim maintenance of Rs.5,000/- per month. Now, within two months from the date of order directing the petitioner to pay interim maintenance, the respondent has filed another application seeking residential order. In the affidavit filed in support of the residential order the respondent had pleaded as if she has come out of matrimonial house voluntarily. The learned counsel for the petitioner further submitted that the Court below at the time of disposing the present application granting the residential order in favour of the respondent failed to render any finding with regard to the incidence of domestic violence. Therefore, the same is not in accordance with Section 18 of the Domestic Violence Act.



4. The learned counsel for the respondent tried to substantiate the order passed by the Court below on the ground that the petitioner has not furnished any evidence before the Court below with regard to his income and as a husband the petitioner is bound to provide residence to the respondent. Therefore, the impugned order passed by the Court below need to be confirmed.

5. Sections 12 and 19 of the Domestic Violence Act, read as follows:

“12.Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such



person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

...



19.Residence orders.—(1) *While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—*

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if



the circumstances so require:

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Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating



to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”

6. A reading of the above provisions would make it clear that at the time of disposing the application filed under the Domestic Violence Act, the Court shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. There is no domestic incident report available before the Court at the time of disposing the application. Further a reading of Section 19 of the Domestic Violence Act would make it clear that before passing the residential order, the Court shall satisfy that the domestic violence had taken place against the petitioner seeking residential order.



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7. In the case on hand, in the affidavit filed in support of the residential order, the respondent/wife claimed that she was chased away from the matrimonial house by the petitioner/husband. However, the said averment was denied by the petitioner/husband in his affidavit and he claimed that the respondent had voluntarily left the matrimonial house. In the absence of any domestic incident report by the Competent Authority or any evidence to support the plea of the respondent that she was chased away from the matrimonial house, the Court below ought not to have passed the residential order without giving any findings with regard to his satisfaction of domestic violence. Therefore, the impugned order passed by the Court below granting residential order in favour of the respondent is not sustainable and the same is liable to be set aside.

8. It is seen from the impugned order, both the petitioner and the respondent failed to substantiate their respective pleadings by leading any evidence before the Court below. Therefore, the matter is remanded back to the file of the Court below and both the parties are entitled to lead evidence in support of their pleadings and the Court shall decide the request for the



CRP.No.3499 of 2019

residential order afresh in accordance with law. The Court below is directed to dispose of the application within a period of three months from the date of receipt of copy of this order.

9. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation Case : Yes/ No
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To

The Family Court Judge, Karaikal.



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CRP.No.3499 of 2019

S.SOUNTCHAR, J.

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CRP.No.3499 of 2019

03.01.2024