



C.R.P.(PD)No.4355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4355 of 2024
and C.M.P.No.24248 of 2024

V.Venkatesh

.. Petitioner

Vs

K.Ramya

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 10.01.2023 passed in I.A.No.3 of 2021 in H.M.O.P.No.4633 of 2019 by the learned IV Additional Principal Judge, Family Court, Chennai.

For Petitioner : Ms. Geeta Ramaseshan

For Respondent : Mr.Adi Narayana Rao



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ORDER

This civil revision petition arises against the order passed by the learned IV Additional Principal Judge, Family Court at Chennai in I.A.No.3 of 2021 in H.M.O.P.No.4633 of 2019, dated 10.01.2023.

2. There is no dispute in the relationship between the parties. The civil revision petitioner is the husband and the sole respondent is the wife. They entered into a matrimony on 24.02.2014. From the wedlock, a child was born on 15.08.2015. Thereafter, due to disputes and differences, the parties have separated. The wife had initiated proceedings for divorce in H.M.O.P.No.93 of 2017, on the file of the Family Court at Chennai. Pleadings were completed and the evidence was also recorded. When H.M.O.P.No.93 of 2017 was at the stage of arguments, the husband filed H.M.O.P.No.4633 of 2019 seeking for restitution of conjugal rights.

3. The respondent/wife took out an application in I.A.Nos.2 & 3 of 2021 on 05.10.2021 seeking for interim maintenance for herself and for the child and for litigation expenses in H.M.O.P.No.4633 of 2019. In so far as the litigation expenses is concerned, Rs.30,000/- was ordered.



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There is no revision as against the said order. Hence, I need not go into the merits of these proceedings.

4. With respect to I.A.No.3 of 2021 namely, the petition filed under Section 24 of the Hindu Marriage Act, notice was ordered to the respondent/husband. The wife pleaded that though she is an M.B.A. graduate, she is earning only a sum of Rs.26,000/- per month, whereas the husband is generating an income of Rs.70 lakhs per year.

5. The husband filed a counter in the said application stating that the wife is employed in BOTVFX Company and is earning Rs.26,000/- per month. He pointed out that this factum was admitted by her in the cross-examination in the previous proceeding. He pleaded that the entire idea of the petition under Section 24 was only to fleece the husband and extract some money from him. The learned Judge called upon the parties to file their affidavits of assets and liabilities.

6. On consideration of the affidavit, counter and the affidavits of assets & liabilities of both the parties, the learned Judge came to a conclusion that the husband is liable to pay Rs.20,000/- per month to the



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wife from 05.10.2021 till the disposal of H.M.O.P. proceedings. He ordered Rs.25,000/- per month for the maintenance of the child.

7. Aggrieved by the said order dated 10.01.2023, an appeal was preferred by the husband to this Court in C.M.A.No.1539 of 2023. The said appeal came to be dismissed as not maintainable following the judgment of the Division Bench in ***S.Menaka v. K.S.K.Nepolian Socraties, 2024 LiveLaw (Mad) 126***. Subsequently, challenging the very same order, this civil revision petition has arisen before me.

8. When the matter came up for admission, I requested Ms.Geeta Ramaseshan to serve the entire typed set of papers on Mr.Adhi Narayana Rao, who represents the wife in the Court below. Accordingly, the papers have been served. I took up the matter for final disposal.

9. The primary point urged by Ms.Geeta Ramaseshan is that the income tax returns produced by the husband before the Family Court at Chennai shows that he is generating an income of Rs.4,20,000/- per year. That being the situation, he cannot be called upon to pay Rs.45,000/- per month.

10. Secondly and more importantly, Ms.Geeta Ramaseshan relies



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upon an appointment order that had been issued to the respondent/wife by M/s.Phantom Digital Effects Limited, situated in Ambattur, whereby the respondent/wife was earning an income of Rs.11,04,000/- per year. She pleads, obviously the wife is earning more than Rs.25,000/- per month that has been disclosed by the respondent/wife in the affidavit of assets. Hence, she pleaded that the order impugned requires to be revised.

11. I should point out here, Ms.Geeta Ramaseshan very fairly stated in so far as the child is concerned, the father will continue to pay a sum of Rs.25,000/- fixed by the Trial Court and the school fees which the child incurs on academic year after academic year.

12. Mr.Adi Narayana Rao invites me to the proof affidavit filed by the husband shows that the plea of the husband is the false one. He notes that the entire personal expenses for the husband alone comes to Rs.55,000/-, whereas his income is only Rs.22,726/- per month. Therefore, he states that the husband has burked the fact that he is generating income from the construction company that he is currently co-owning along with his father.

13. With equal fairness, Mr.Adi Narayana Rao accepts that the wife is currently employed in Hyderabad with M/s.Phantom Digital



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Effects Limited. He also states that the amount that has been given in annexure – A of the said letter dated 06.01.2023 is also true. He adds that the husband has been only depositing 50% of the maintenance amount awarded by the Court and not the amount as fixed by the Trial Court. He states that his client has not taken any steps for enforcing the order, though the stay was vacated on the dismissal of the appeal in April 2024. He adds the amount that has been fixed takes into consideration the status of the parties and therefore, it does not require any interference at all.

14. I have carefully considered the submissions of both sides and have gone through the records.

15. As premised earlier, there is no dispute in the relationship between the parties and the fact that there is a child from the wedlock. The husband is also not agitating the correctness of the amount of Rs.25,000/- fixed for the child. He stands by his statement that he will continue to pay the school fees of the child. Therefore, this Court has to turn its attention only to the amount of maintenance that the wife would be entitled to pending disposal of H.M.O.P.No.4633 of 2019.



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WEB COPY 16. The learned Judge, at the time of disposal of the application, could not take into consideration the employment that had been secured by the respondent/wife. This is on account of the fact that it was not brought to the notice of the Court. I am not placing much weight on the fact that the respondent did not bring it to the notice of the Court, since she was appointed on 06.01.2023 and the order was passed on 10.01.2023. Perhaps the appointment order came, after the orders being reserved and therefore, it could not be brought to the attention of the Court.

17. Be that as it may, it is not in dispute that the wife is generating about Rs.11 lakhs of income per year. I have to observe that by itself does not disentitle her for maintenance. Her place of employment is in Hyderabad and obviously, she has to incur expenses for her travel from Hyderabad to Chennai. Mr.Adi Narayana Rao states that the wife travels on every week-end to be with the child.

18. I have to agree with Mr.Adi Narayana Rao on the point that while the husband has filed income tax returns of Rs.4,20,000/- per



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annum, he seems to be a financial wizard in being able to spend Rs.6 lakhs per year on himself. As to how the husband is able to spend Rs.2 lakhs more than what he is actually earning, is not for me to investigate here. Suffice to say, much weight cannot be placed on his income tax returns. The specific assertion of the wife is that the husband is working along with his father in a construction company and earning about Rs.70 lakhs per year. The counter does not specifically deny this aspect.

19. Taking over all circumstances into consideration, I am of the view that the order of the learned Judge granting maintenance does not require interference, but the quantum of maintenance alone requires to be revised.

20. In the light of the above discussions, I pass the following the orders:

(i) The amount of maintenance for the wife is fixed at Rs.20,000/- per month from 05.10.2021 till 31.01.2023.

(ii) From 01.02.2023 till date, the husband shall pay a sum of Rs.15,000/- per month to the wife as maintenance.

(iii) As 50% of the amount has been deposited by the husband, the



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wife will be entitled to withdraw the said amount.

WEB COPY (iv) On filing a cheque application, the husband will have no objection for withdrawal of the same.

(v) He is granted six weeks time to pay the balance amount.

(vi) The husband shall file a memo of calculation before the Court as to the amounts due from October 2021 till January 2023 and the amount that the husband has to pay from February 2023 till date.

(vii) Needless to point out the liability of the husband to pay Rs.25,000/- per month and the school fees for the child continues.

(viii) Both counsels point out that the evidence is completed in O.P.No.93 of 2017 and H.M.O.P.No.4633 of 2019 is posted for cross-examination of the husband.

(ix) Therefore, the learned IV Additional Principal Judge, Family Court at Chennai is requested to expedite the proceedings in H.M.O.P.No.4633 of 2019 and ensure that the trial in that proceedings is completed by 31.03.2025. A common judgment is pronounced in both O.P.No.93 of 2017 & H.M.O.P.Nos.4633 of 2019 on or before 30.04.2025.

(x) The arguments in O.P.No.93 of 2017 shall await the completion of the trial in H.M.O.P.No.4633 of 2019.



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WEB COPY 21. With the above directions, the civil revision petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj

To

IV Additional Principal Judge, Family Court, Chennai.

V. LAKSHMINARAYANAN,J.



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