



CRP.No.4291 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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and C.M.P.No.23849 of 2024

S.Devaharirajan

.. Petitioner

Versus

Sangeetha

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.10.2023 made in I.A.No.2 of 2022 in HMOP.No.34 of 2021 on the file of the learned Principal Subordinate Judge, Kancheepuram.

For Petitioner : Mr.T.K.Kulasekaran

ORDER

This civil revision petition is at the instance of the husband.

2. O.P.No.34 of 2024 has been initiated by the husband seeking for divorce under Section 13(1)(1-a) of this Hindu Marriage Act. There is no



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dispute in the relationship between the parties. The petitioner/husband married the respondent/wife on 11.07.2019 at Kundrathur in Chennai. From the wedlock, a girl child was born on 29.05.2020. Soon thereafter the parties separated and they are now meeting in the Court. The husband called upon the wife to agree to divorce by mutual consent, but she did not agree to the same. Hence, he came forward with HMOP 34 of 2021.

3. Pending the HMOP, the wife took out an application for grant of interim maintenance in IA.No.2 of 2022. She pleaded that she is unemployed and as the child is aged about four years, she has to take care of it and therefore, sought for interim maintenance of Rs.30,000/-.

4. The civil revision petitioner/husband entered appearance and pleaded that he is earning Rs.300 per day and with that paltry sum, he has to take care of himself and his aged mother. He added that the tuition classes, he was handling before the pandemic caused by covid-19 had to be wound up. He pleaded today he relies solely upon selling steel scrubbers for the purpose of eking out a living. Hence, he pleaded that the wife is not entitled to maintenance.



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5. The learned Judge, who had the opportunity of looking at the parties and after assessment of their status, decided that the husband will pay a sum of Rs.15,000/- to the wife and child. Aggrieved by the said order, the husband is on revision.

6. I have heard Mr.T.K.Kulasekaran for the civil revision petitioner.

7. Mr.T.K.Kulasekaran argues that the order of the learned Trial Judge deserves interference for the following reasons:

- (i) the child has not been impleaded as a party to the proceedings;
- (ii) the wife, being a recalcitrant person, who wants to live in a nuclear family to the exclusion of the mother-in-law, had not initiated any proceedings under Section 9 of the Hindu Marriage Act.

8. Mr.T.K.Kulasekaran points out that the petitioner/husband has to take care of his mother and he is not in a position to pay maintenance to the wife. Finally he argues that the wife is educated and that, she is capable of earning and the husband should not be made to pay for her maintenance. At



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the time of winding up of arguments, he states that the High Courts of Karnataka, Kerala, Punjab and Madhya Pradesh have come down heavily on a separated wife invoking Section 24 of the Hindu Marriage Act and Section 125 of the Code of Criminal Procedure seeking maintenance and thereby, standing in the way of reunion.

9. I have carefully considered the argument of Mr.T.K.Kulasekaran

10. There is no dispute in the relationship between the parties. As held by the Supreme Court in *Rajnish v. Neha*, (2021) 2 SCC 324, it is the sacrosanct duty of the husband to maintain his wife and child. The Courts have consistently held that even if a wife is capable of earning, the mere fact that she has such capability does not mean she is not entitled to maintenance.

11. With respect to the plea that the child has not been impleaded under Section 24, I have to only re-state the settled position of law that the maintenance for a wife under Section 24 of the Hindu Marriage Act includes the maintenance that has to be ordered for the child. Hence, non-impleading



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of the child is not essential.

12. As regards the filing of an application under Section 9, failure to file an application for restitution of conjugal rights is not a bar for the wife to claim maintenance under Section 24. Under Section 24 of the Hindu Marriage Act, a spouse has to plead that he or she is not in a position to maintain themselves. Once it is substantiated by filing of an affidavit of assets before the Court, then the burden is on the opposing spouse and in this case, the husband has to prove that the wife is generating income and still, she is making an unfair claim on the husband. Such a plea is absent in the counter that has been filed by the civil revision petitioner.

13. With respect to the plea that he has to maintain his mother, I am not able to accept the said submission. Maintenance of one's mother is not mutually exclusive from the maintenance of the wife and child. It is the duty of the son to maintain the mother and it is equally the duty of the husband to maintain the wife and child. Therefore, that submission too deserves rejection.



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14. With respect to the plea that Section 24 of Hindu Marriage Act and Section 125 of the Code of Criminal Procedure have been abused, Mr.T.K.Kulasekaran has not produced any judgment that is said to have been pronounced by the aforesaid Courts. Even if such judgment had been pronounced, I am of the view that they would have been pronounced in the peculiar facts and circumstances of the said case presented before the learned Judges, who dealt with the said application.

15. For the purpose of this revision, I am satisfied that the amount of Rs.15,000/- for two human being living in the city of Chennai can neither said to be excessive nor arbitrary. It hardly works out to Rs.300 per day for the wife and Rs.150 for the child. Considering the cost of living and status of the parties, the learned Trial Judge has been very reasonable in fixing a sum of Rs.15,000/-. I do not find any reason to interfere.

16. In fine, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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

To

The Principal Subordinate Judge, Kancheepuram.



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V.LAKSHMINARAYANAN, J.

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