



C.R.P.No.410 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12-12-2024**

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P. No. 410 of 2024

and C.M.P.No.1956 of 2024

Dinesh Kumar

.... Petitioner

Vs

1. D.Sujatha

2. Bhuvaneswari

3. A.Karthik

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the judgement of the II Additional Sessions Judge, City Civil Court, Chennai dated 11.07.2023 made in Crl Appeal No.161 of 2021 in partly allowing and modifying the judgement dated 17.02.2020 made in MP No.631 of 2019 in D.V.C.No.11 of 2016 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai 15.

For Petitioner : Mr.R.Prasath

For Respondent : Ms.S.Priyadharshini

ORDER

This Civil Revision Petition arises against the order passed by the II Additional Sessions Judge, City Civil Court, Chennai in Crl.A. No.161 of



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2021 dated 11.07.2023 in modifying the order of learned XXIII Metropolitan Magistrate, Saidapet, Chennai – 15 in CrI MP No.631 of 2019 in DVC No.11 of 2016 dated 17.02.2020.

2. The relationship between the Civil Revision Petitioner and the 1st respondent is not in dispute. The petitioner married the 1st respondent on 30.06.2024. From the wedlock, a female child was born on 10.07.2005. Due to disputes and differences, the parties separated. They are now meeting only in Court.

3. The 1st respondent initiated DVC No.11 of 2016. She sought for several reliefs under the provisions of the Domestic Violence Act. Pending disposal of the Domestic Violence Petition, she sought for maintenance of Rs.30,000/- per month. This petition was received as CrI MP No.631 of 2019. The respondent resisted the application, stating that the property in which the wife and child are residing belongs to him and is mortgaged with M/s.HDFC Bank. He pleaded that he is not in a position to pay any maintenance as he was forced to leave the house. In his affidavit before the Trial Court, the petitioner stated that the 1st respondent wife agreed to pay the remaining bank loan and take care of the house. Since he has already provided a roof over the head of his wife and child, he stated that he is not liable to pay any maintenance at all.



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4. The learned Trial Judge, after appreciating the affidavit and counter, came to a conclusion that the husband is liable to pay a sum of Rs.30,000/- per month as maintenance.

5. Aggrieved by the same, the husband preferred an appeal before the Principal Sessions Judge, invoking Section 374 of Cr.PC read with Section 29 of the Protection of Women from Domestic Violence Act. The learned Principal Sessions Judge, bound over the appeal to the II Additional Sessions Judge, City Civil Court, Madras. The learned Judge partly allowed the appeal, reducing the maintenance from Rs.30,000/- to Rs.20,000/- and further directed the petitioner / husband to pay the EMI to M/s.HDFC Bank on the loans obtained on the property and disposed of the appeal. Aggrieved by the same, the present Civil Revision Petition is filed.

6. I heard Mr.R.Prasath, learned counsel for the Civil Revision Petitioner and Ms.S.Priyadharshini, learned counsel for 1st respondent. Respondents 2 and 3 are the mother and brother of the Civil revision petitioner and hence, they are not necessary parties in this proceeding and notice is dispensed with on them.

7. The narration of facts establishes that the relationship between



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the petitioner and the 1st respondent is not in dispute. Similarly, the birth of their child is also not in dispute. Mr.Prasath, argues that on account of the Cyclone Vardha, the petitioner lost his business and is now eking out of his livelihood by working as a Supervisor in Coimbatore.

8. Per contra, Ms.Priyadarshini, states that the wife and child are residing in the property which belongs to the Civil Revision Petitioner and are facing SARFAESI proceedings initiated by HDFC bank. She submitted that she approached the jurisdictional Debt Recovery Tribunal challenging the SARFAESI proceedings. The same has been disposed of imposing a condition. Accordingly, the 1st respondent had paid a sum of Rs.5,00,000/- to avoid dispossession. Additionally, she adds that the child is currently pursuing her 2nd year Bachelor of Computer application at SRM Univerisity in Chennai. She states that the amount that has been fixed by the Court is neither excessive nor arbitrary and does not require the interference.

9. Unlike normal proceedings challenging the interim maintenance under the DVC Act, the husband has been given two layers of judicial remedy. The first layer being a regular appeal before the Court of Sessions under Section 29 of the Protection of Women from Domestic Violence Act, and thereafter, a revision to this Court by way of Article 227 of the Constitution of India. In this pyramidical structure, when the Trial Court and the Lower



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Appellate Court have appreciated the facts before them and they taken a view on entitlement and quantum, unless and until the quantum of maintenance that has been fixed by the Courts is shockingly arbitrary or *per se* excessive, this Court should seldom interference with such orders.

10. The relationship between the parties as pointed out is not in dispute. The 1st respondent and her daughter have been provided for an accomodation. Therefore, under the Act, the liability of the husband for providing a household towards them has been satisfied. That by itself is not sufficient for a party. There are day to day expenses like food, clothing and medicine etc., The amount that has been fixed by the learned Trial Judge was Rs.30,000/- for both the wife and child. This order has been modified by the learned Appellate Judge taking into consideration the day-to-day needs of the 1st respondent as well as the educational expenses that is incurred for the child.

11. Though, Ms.Priyadharshini pleads that the 1st respondent is spending a sum of Rs.1,10,000/- for the educational expenses of the child alone, since the wife is not on revision before this Court, I need not strain myself on this aspect.



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12. The amount of Rs.10,000/- per head works out to Rs.300 per day. The parties are residents of the Metropolitan City of Chennai. This amount is hardly sufficient for a decent livelihood. I cannot say with this amount the 1st respondent and her daughter will be leading a life in the lap of luxury.

13. Apart from that, though the Civil Revision Petitioner pleads that the wife is employed, he has not let in any evidence before the Courts below to substantiate this plea.

14. In the over all circumstances of the case, since I do not find the amount to be excessive or arbitrary and as the petitioner has got the benefit of an order from the Lower Appellate Court, which has appreciated the law as well as the facts, I am not inclined to interfere with the revision. This Civil Revision petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. After the orders have been pronounced, Mr.R.Prasath, states that he is willing to settle the matter with the 1st respondent through the process of Mediation. The learned XXIII Metropolitan Magistrate, Saidapet, Chennai, shall enquire with the 1st respondent and her husband in this regard. In case they express willingness to settle the matter by process of mediation,



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the learned Magistrate shall refer the parties to the Mediation attached to the
High Court of Madras.

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Index : Yes/No
NC : Yes/No
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To

1. II Additional Sessions Judge, City Civil Court, Chennai
2. XXIII Metropolitan Magistrate, Saidapet, Chennai 15.



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V.LAKSHMINARAYANAN, J.

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