



C.R.P. (PD) No.4947 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP. (PD)No.4947 of 2024 and
C.M.P.No.27843 of 2024

E. DHANASEKARAN
S/O. ERUCHAPPAN,
NO. 12/55, FAKKIR SHAHIB STREET,
ROYAPURAM, CHENNAI 13. .. Petitioner

Versus

D. DHAYALINI
W/O. DHANASEKARAN,
NO. 29/12, WASHERMEN STREET,
ROYAPURAM,
CHENNAI 13. .. Respondent

Prayer : Petition filed under Article 227 of the Constitution of India, praying to set aside the fair order and decreetal order dated 21/05/2024 passed in I.A.No.1 of 2022 in O.P.No.1468 of 2021, on the file of II Additional Principal Family Court, Chennai.

For Petitioner : Mr.A.Prabhakaran

For Respondent Mr.Subhalaxmi Samanta (Caveator)



C.R.P. (PD) No.4947 of 2024

ORDER

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This Civil Revision Petition is at the instance of the husband.

He initiated O.P.No.1468 of 2021 on the file of the II Additional Principal Family Court, Chennai invoking Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955.

2. For the sake of convenience, the parties will be referred to as husband and wife. The husband/petitioner married the respondent/wife on 26.06.1994. From the wedlock, three male children were born. Subsequently, due to disputes and differences, the parties separated. The first and second sons are with the civil revision petitioner and the third son is with the mother.

3. Summons was served in O.P.No.1468 of 2021. Soon thereafter, the wife filed an application in I.A.No.1 of 2022. In this application, she sought for interim maintenance of Rs.25,000/- per month for herself, Rs.50,000/- towards litigation expenses, and Rs.500/- for every hearing towards transportation charges. According to her, she is



C.R.P. (PD) No.4947 of 2024

residing with her widowed mother, who makes a living by selling fish.

Due to her mother's old age, she is not able to go to the market to sell fish and earn any income. She pleaded that the husband is indulging in transportation business and is generating considerable income. Being unable to educate her son in the Government Polytechnic College, R.K.Nagar, Chennai and also not able to meet her basic needs like provisions, milk, food, vegetables, snacks, etc., she filed the said application.

4. The husband received notice in the said application and filed a counter. He pleaded, as a dutiful father and husband, he had been paying a sum of Rs.5,000/- per month to his third son. He pleaded that it was the wife who left him and been living separately for the past fifteen years. He pointed out that on account of the attitude of the petitioner, he lost his business and is presently working in a private company and that he is under the care and custody of the first two sons born to him through the respondent.



C.R.P. (PD) No.4947 of 2024

5. Learned Trial Judge, on the basis of the affidavit and petition, came to a conclusion that the husband is duty bound to maintain his wife and children. Learned Judge partly allowed the application holding that the husband shall pay a sum of Rs.10,000/- per month to his wife and Rs.10,000/- towards maintenance for his son, and a sum of Rs.10,000/- towards litigation expenses. Learned Judge did not grant any amount towards transportation charges. Aggrieved by the same, the husband is on revision before me.

6. I heard Mr.A.Prabhakaran for the civil revision petitioner and Ms.Subhalaxmi Samanta for the Caveator.

7. Mr.A.Prabhakaran argues that the third son is aged about 20 years and therefore, he is not a minor for maintenance to be granted. He states that while he has no objection for a sum of Rs.10,000/- being paid for the wife, the Trial Court erred in granting maintenance for the son. It was not sought for by the respondent herself in the petition. He invites my attention to the prayer portion in I.A.No.1 of 2022 to point out that the



C.R.P. (PD) No.4947 of 2024

respondent had only sought for maintenance for herself and not for the third son. Hence, he pleads that the order granting maintenance for the third son be set aside.

8. Per contra, Ms.Subhalaxmi Samanta, argues that the relationship being admitted between the parties and it is duty of the husband to maintain his wife and children. She states that the order is well reasoned and does not require any interference.

9. I carefully considered the submissions on either side. The plea of Mr.Prabhakaran, that only a single petition was filed by the respondent for maintenance for herself and that the Court erred in granting maintenance for the child, does not require much of discussion. Under Section 24 of the Hindu Marriage Act, 1955 (The Act), maintenance *pendente lite* can be sought for by the mother. Since the mother and son being a single unit, a court can pass an order under Section 24 for maintenance of the child also. Apart from that, in terms of Section 26 of the Hindu Marriage Act, a court has a power to order



C.R.P. (PD) No.4947 of 2024

custody, maintenance as well as provision for education of minor children. Instead of filing two separate applications, the respondent has filed a single one. Therefore, I reject the argument of Mr.Prabhakaran that the Court could not have granted maintenance for the child also under Section 24. For mere quoting of wrong provision of law, a petition need not be dismissed if the power is otherwise available to the Court.

10. As per Section 26 of the Act, maintenance can be ordered only for minor children. As to who is a minor, I have referred to the Majority Act of 1875. Under Section 3 of the said Act, a person is declared to have attained majority on his completing the age of 18. On the date of filing of the petition, the third son was aged about 20. Therefore, he is a major. When the Section contemplates payment of maintenance to the children, obviously it cannot include a person who has attained the age of majority.

11. Now turning to the operative portion of the order, learned Judge has held that the mother, since she is taking care of the child, is



C.R.P. (PD) No.4947 of 2024

only entitled to a sum of Rs.10,000/- as the remaining Rs.10,000/- is being spent on the third son. This shows cumulatively the mother and her son are incurring an expenditure of Rs.20,000/- per month. It is only on the score that the respondent has sought for a sum of Rs.20,000/-. As pointed out earlier, the mother and son are a single unit.

12. Though the Civil Revision Petitioner has pleaded that he had been spending a sum of Rs.5,000/- per month on the son, no evidence has been let in before the Court to substantiate such plea. While fixing the quantum of maintenance, the Court has to be guided as to the amount that the husband would be spending on his family, had they lived together if not for the divorce proceedings. The Civil Revision Petitioner is indulging in transport business and commensurate with that status, I feel that he would have spent about the sum of Rs.20,000/- on the wife.

13. In the light of the above discussion, the order of the learned II Additional Principal Family Judge at Chennai in I.A.No.1 of 2022 in O.P.No.1468 of 2021, dated 21.05.2024, is modified. I.A.No.1 of 2022



C.R.P. (PD) No.4947 of 2024

will stand allowed to the extent of Rs.20,000/- per month to be paid by the Civil Revision Petitioner to his wife. The direction by the learned Judge to the Civil Revision Petitioner to pay a sum of Rs.10,000/- per month to the third son, who is a major, shall stand deleted. In the result, the order of the learned Trial Judge shall be read that the petitioner shall pay the respondent a sum of Rs.20,000/- per month.

14. With the above modification, the Civil Revision Petition is partly allowed. Consequently, connected miscellaneous petition is closed.

No costs.

09.12.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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C.R.P. (PD) No.4947 of 2024

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The II Additional Principal Family Court,
Chennai.



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C.R.P. (PD) No.4947 of 2024

V.LAKSHMINARAYANAN J.

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CRP. (PD)No.4947 of 2024
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