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C.R.P.No.4734 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4734 of 2024

Kumarasamy

.. Petitioner

Versus

Rani

.. Respondent

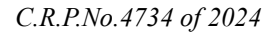
Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 20.09.2024 passed in F.C.I.A. No.06 of 2024 in FCOP.No.34 of 2024 on the file of the Family Court, Ariyalur.

For Petitioner : Ms.Chenthoori Pugazendhi

ORDER

This civil revision petition arises against the order passed by the learned Family Judge, Ariyalur in FC.I.A.No.6 of 2024 in FCOP.No.34 of 2024 dated 20.09.2024.

2. The civil revision petitioner is the husband. The petitioner married the respondent on 05.09.2005. The wedlock produced two girl children and both are under the care and custody of the civil revision petitioner. Alleging



3. On being served with summons, the wife took out an application under Section 24 of the Hindu Marriage Act. She sought for a sum of Rs.30,000/- per month towards interim maintenance and a sum of Rs.15,000/- towards litigation expenses. The said application was numbered as FCIA.No.6 of 2024.

4. Notice was ordered to the petitioner/husband.

5. The petitioner/husband filed a counter stating that the wife is living in an adulterous relationship with the second respondent in the main FCOP. He pleaded that a complaint attracting offences under POCSO had been made against the wife and her alleged paramour. The case was taken on file as S.C.No.69 of 2021. In the said proceedings, the paramour was convicted in and by way of a judgment dated 24.01.2023 by Mahalir Neethi Mandram at Ariyalur. The husband added that the wife is gainfully employed by making garlands and is also getting money from the Government under



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MGNREGA scheme. With respect to his employment, he accepted that he is working in the Postal Department, Trichirapalli. He pleaded that he has taken loans to the tune of Rs.10,50,000/- and after payment of the amounts towards EMI, he is only receiving a sum of Rs.8,000/-. He pleaded that this amount is hardly sufficient to maintain himself and his daughters and therefore, sought for dismissal of the petition.

6. Neither party entered the witness box. The wife filed her affidavit of assets and liabilities. The husband failed to do so.

7. On the basis of the affidavit, counter and affidavit of assets and liabilities of the wife, the learned Trial Judge came to a conclusion that the wife will be entitled to a sum of Rs.8,000/- from July 2024 till disposal of the petition. Challenging the same, the present civil revision petition.

8. I have heard Ms.Chenthoori Pugazendi for the civil revision petitioner.



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9. Ms.Chenthoori Pugazendhi submits that after payment of loans incurred by the husband, he is hardly receiving a sum of Rs.8,000/- and if this amount is to be paid in entirety to the wife, he will be left with nothing. Further, she invites my attention to the order of the Sessions Court in SC.No.69 of 2024 to point out that the wife was also an accused in the said case. She adds, the alleged paramour of the wife was convicted by the learned Sessions Judge in the said case. Therefore, she pleads that the order of the Family Court has to be revised.

10. I have carefully considered the submissions of Ms.Chenthoori Pugazendhi.

11. The duty of the husband to maintain his wife is sacrosanct. Unlike the Code of Criminal Procedure, where a wife is not entitled to maintenance, if she is living in adultery or is living separately from the husband on account of her default under Section 24 of the Hindu Marriage Act, which was enacted by the Parliament too, such limitations have not been placed. All that the wife has to plead in such a petition is that she has no independent income sufficient to maintain herself and she does not possess funds to pay litigation expenses.



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12. By virtue of the affidavit filed in FCIA.No.6 of 2024 as well as by presenting her affidavit of assets and liabilities, the wife has shown that she is not in a position to maintain herself. Though the husband had an opportunity to prove that the wife is having sufficient income, he had failed to avail the said opportunity before the Trial Court. In addition, he also did not file his affidavit of assets and liabilities.

13. Apart from the ipse dixit of his counter affidavit in FCIA.No.6 of 2024, no other material is available before the court to show that the wife is earning or to the fact that husband has incurred liabilities. Apart from the above, I have to point out that if priority has to be decided between maintaining one's wife and servicing the loans availed by the husband, obviously the former takes the priority. In any event, a sum of Rs.8,000/- for an individual to survive the vagaries of litigation cannot be held to be excessive and arbitrary.

14. In the light of the above discussion, I am not inclined to agree with the submissions made by Ms.Chenthoori Pugazendi. The civil revision petition is dismissed. No costs.

28.11.2024

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Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no



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V.LAKSHMINARAYANAN, J.

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To

The Family Court, Ariyalur

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