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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.4606 of 2023

S.Priya ... Petitioner

Vs.

B.Vino ...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order in IA No.2 of 2023 in HMOP No.14 of 2020 dated 19.10.2023 on the file of learned Subordinate Judge, Dharapuram.

For Petitioner : Mr.N.Ponraj

O R D E R

This Civil Revision Petition is filed to set aside the fair and decretal order in IA No.2 of 2023 in HMOP No.14 of 2020 dated 19.10.2023 on the file of learned Subordinate Judge, Dharapuram.

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2. The petitioner is the wife and the respondent is the husband in HMOP No.14 of 2020 on the file of learned Subordinate Judge, Dharapuram. The respondent/husband has filed the HMOP for divorce against the petitioner/wife. In HMOP, the petitioner/wife has filed an application in IA No.1 of 2022 seeking interim maintenance, which was ordered on 21.06.2022 directing the respondent/husband to pay monthly maintenance of Rs.12,000/- per month and litigation expenses of Rs.10,000/- and on failure to comply with the said order, the respondent/husband would be precluded to proceed with the divorce proceedings. Since the respondent/husband failed to comply with the said interim maintenance order, the original petition was dismissed. Thereafter, the respondent/husband filed an application in IA No.2 of 2023 to condone the delay in filing the application and to restore the original petition which was dismissed for default on 02.08.2022 for not complying with the order of the court on 02.08.2022, which was allowed on payment of Rs.2,000/- by the respondent to the petitioner. Challenging the said order, the petitioner/wife has filed the present civil revision petition.

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3. Learned counsel for the petitioner submits that the respondent has not given valid reason for condoning the delay. The Trial Court without considering the said contention raised by the petitioner, has allowed the application on payment of cost of Rs.2,000/-. Hence, the order passed by the trial court is liable to be set aside.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The facts reveal that the petitioner is the wife and respondent is the husband in HMOP No.14 of 2020 on the file of the learned Subordinate Judge, Dharapuram. In HMOP, the petitioner/wife has filed an application in IA No.1 of 2022 seeking interim maintenance, which was ordered on 21.06.2022 directing the respondent/husband to pay monthly maintenance of Rs.12,000/- per month and litigation expenses of Rs.10,000/- and on failure to comply with the said order, the respondent would be precluded to proceed with the divorce proceedings. Since the respondent/husband failed to comply with the said interim maintenance order, the original petition was

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dismissed. Thereafter, the respondent/husband has filed an application in IA No.2 of 2023 to condone the delay in filing the application to restore the original petition which was dismissed for default on 02.08.2022 for not complying with the order of the court. This petition was allowed on payment of cost of Rs.2,000/- by the respondent to the petitioner. Challenging the said order, the present civil revision petition is filed.

6. This Court is of the view that being a matrimonial matter, the petitioner also has filed an application for restitution of conjugal rights pending before the same court. Further, it is noticed that the respondent/husband has paid the entire interim maintenance awarded by the trial court to the petitioner/wife. In such circumstances, in order to arrive at a final adjudication between the parties, this divorce petition has to be restored. Thus, the trial court has rightly allowed the condone delay petition on payment of cost of Rs.2,000/- by the respondent to the petitioner. Therefore, I find no infirmity in the order passed by the trial court and there are no merits in the civil revision petition.

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7. In fine, the civil revision petition is dismissed. There will be no order as to costs. CMP No.27485 of 2023 is closed.

08.01.2024

Index: Yes/No
Internet: Yes/No
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To

The Subordinate Judge, Dharapuram

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V.SIVAGNANAM, J.

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