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C.R.P.No.5162 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5162 of 2024 and
C.M.P.No.28925 of 2024

Syed Valiyullah

...

Petitioner

Vs.

Dowlathbee

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the impugned order passed by the Principal Sessions Court, Tiruvannamalai in Cr.M.P.No.2582 of 2024 in unfilled Criminal Appeal dated 13.11.2024 as far as the condition of payment of cost of 50% of the Arrears is concerned.

For Petitioner

: Mr.Sudhangan
for K.Uthayanithi

ORDER

This civil revision petition challenges the order of the Principal Sessions Court, Tiruvannamalai, passed in Cr.M.P.No.2582 of 2024 in unnumbered Criminal Appeal, dated 13.11.2024.

2.For the sake of convenience, the parties shall be referred to as



husband and wife.

3.The civil revision petitioner is the husband. He married the sole respondent on 13.11.2011. From the wedlock, a child was born on 26.07.2012. The husband was employed in Kuwait. The wife alleged that the husband did not take care of her or the child and therefore, she had to work as a daily wage earner. On account of financial deprivation and since she did not have support from her mother, who was aged about 85 years, she presented the domestic violence petition claiming several reliefs under Sections 18 to 20 of the Act 43 of 2005. She had arrayed her husband, Father-in-law, Mother-in-law and Sister-in-law as respondents in the domestic violence petition.

4.The parties went to trial. The wife examined herself and two other witnesses. She marked Exs.P1 to P6. The husband did not testify. Instead his mother had entered the witness box and examined herself as RW1. She marked Exs.R1 to R5. After a detailed analysis of the evidence, oral and



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documentary, the learned Additional Mahila Judge, Tiruvannamalai, came to a conclusion that the wife will be entitled to a protection order under section 18, residence order under Section 19 and maintenance of Rs.30,000/- from 10.08.2015 under Section 20.

5. Aggrieved by the same, the husband alone preferred an appeal before the learned Principal Sessions Judge, at Tiruvannamalai. The appeal was presented with a delay. Hence, he filed an application to condone the delay in filing the appeal. This petition was numbered as CrI.M.P.No.2582 of 2024. He pleaded that he appeared before the Court on 25.03.2024 and no judgment had been delivered. He became aware of the proceedings only when he was served with the subsequent summons in July 2024. Immediately, he contacted his counsel, applied for a copy and had preferred the appeal.

6. Notice was ordered to the respondent. The respondent pointed out that the husband was fully aware of the order passed by the Court and yet he did not prefer the appeal immediately. He was waiting and watching and



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only when a petition under Section 31 of the DV Act was filed and notice was served that he preferred the appeal. She pointed out that the husband appeared before the learned Additional Mahila Judge on 16.07.2024. The wife argued that there was no cause, much less any sufficient cause, to condone the delay, and sought for dismissal of the petition.

7.The learned Principal Sessions Judge, on appreciation of the entire facts came to the conclusion that the husband should deposit 50% of the arrears of maintenance on or before 13.12.2024. Therefore, the husband has presented the revision challenging the said order.

8.Heard Mr.Sudhangan for the civil revision petitioner. Mr.Sudhangan states that the husband had met with an accident on 26.05.2022 and therefore, he is not in a position to go for employment. He pleaded that imposing of a condition of 50% is on the higher side and that in any event, the time granted is also not sufficient.



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9.I have carefully considered the submissions of Mr.Sudhangan. I have gone through the records.

10.As pointed out above, there is no dispute between the relationship between the parties or the birth of the child. The child is aged about 12 and under the custody of the wife. The wife does not have a roof over her head. She pleaded that she is living at the mercy of her sister. The husband has been earning handsomely by working in Kuwait.

11.The learned Principal Sessions Judge has obviously taken into consideration is that the accident that had taken place to the husband on 26.05.2022. Hence, the Sessions Court had taken a liberal approach to condone the delay. Balancing the interest of the wife and the husband, he has imposed a condition that the husband should deposit 50% of the maintenance amount.

12.The learned Principal Sessions Judge has been alive to the situation



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that a petition under Section 31 of the DV Act is pending before the Court.

The entitlement of the wife to be maintained by her husband cannot be disputed. Neither can it be disputed that the child should also to be maintained. From 2015 onwards, the wife has been without any support. Taking into consideration all these circumstances, the learned Principal Sessions Judge has come to the conclusion for deposit of 50%.

13.The overall circumstances also persuades me to agree with the learned Principal Sessions Judge. Therefore, I am not inclined to interfere with the discretionary order exercised by the learned Principal Sessions Judge.

14.However, as pointed out by Mr.Sudhangan, to pay the entire amount within a month would be a difficult task when the husband has suffered an injury. Therefore, that portion of the order alone is modified and the husband shall pay half of the 50% on or before **31.01.2025** and the remaining amount on or before **28.02.2025**.



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15. With the above modification of the time alone, the civil revision petition stands dismissed, consequently, connected miscellaneous petition is also closed. No costs.

sli

16.12.2024

Internet: Yes

Index: Yes/No

Speaking/Non speaking order

NCC: Yes/No

To:

The Principal Sessions Court,
Tiruvannamalai.

V.LAKSHMINARAYANAN,J.



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