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C.R.P.(NPD) No.5206 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.5206 of 2024 and
C.M.P.Nos.29110 & 29111 of 2024

S.R.Vijaya Kumar

... Petitioner/Respondent

-VS-

Mrs.V.Nandhini Vijaya Kumar

... Respondent/Petitioner

Prayer: Civil Revision Petition filed under Section 115 of CPC to direct the Hon'ble IV Additional Family Court at Chennai to number the restoration petition in S.R.No.13084 of 2024 dated 02.12.2024 and set aside the docket order in I.A. for restoration of petition in H.M.O.P.No.357 of 2023 on the file of the Hon'ble IV Additional Family Court at Chennai by allowing the present Civil Revision Petition.

For Petitioner : M/s.R.Yash Rathi

ORDER

Challenging the impugned Docket Order, returning the application filed for restoration of H.M.O.P.No.357 of 2023, the instant Civil Revision Petition has been filed.

2. Since the Court below returned the application even without



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numbering the same, no notice is required to be served on the respondent and the same is dispensed with.

3. The revision petitioner had filed H.M.O.P.No.357 of 2023 before IV Additional Family Court, Chennai for restitution of conjugal rights and the said petition was dismissed for default on 28.11.2024, pursuant to which, the revision petitioner filed an application for restoration of the main petition on 02.12.2024. Though the said application has been numbered as S.R.No.13084, the same has been returned mainly on the ground that interim maintenance had not been paid and therefore, the application cannot be maintained.

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

5. When an application is filed for restoration of the main petition, it cannot be prevented just citing non payment of interim maintenance. If the interim maintenance is not paid, there are other modes



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for enforcing the order for recovery of the amount. The approach of the Trial Court in returning the application filed for restoration without even numbering, cannot be sustained and therefore, the Docket Order of the Trial Court is liable to be set aside.

6. Accordingly, this Civil Revision Petition is allowed and the order impugned herein is set aside. The Trial Court is directed to number the application and decide the main H.M.O.P.No.357 of 2023 on merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.12.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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To:

IV Additional Family Court Judge,
Chennai.



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N.SATHISH KUMAR,J.,
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