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C.R.P.(MD)No.3097 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No.3097 of 2023

Muthukumar : Petitioner/Respondent/
Petitioner

Vs.

Kartheeswari @ Dharageswari : Respondent/Petitioner/
Respondent

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order, dated 29/08/2023 passed in IA No.62 of 2022 in HMOP No.185 of 2021 by the Principal Sub Court, Pudukkottai and pass such other appropriate orders.

For Petitioner : Mr.A.Arul Jenifer
for M/s.KBS Law Office

For Respondent : Mr.J.Barathan

O R D E R

This civil revision petition has been filed seeking to set aside the order, dated 29/08/2023 passed in IA No.62 of 2022 in HMOP No.185 of 2021 by the Principal Sub Court, Pudukkottai.



C.R.P.(MD)No.3097 of 2023

2. The facts in brief:-

HMOP No.185 of 2023 was filed by the petitioner against the respondent seeking a decree of divorce on the ground of cruelty. It was filed, on 20/09/2021 before the Sub Court, Pudukkottai.

2. Pending the process, the respondent herein took out a petition under section 24 of the Hindu Marriage Act seeking interim maintenance amount by filing IA No.6 of 2022 with the following averments:-

Originally, HMOP No.166 of 2008 was filed by the respondent seeking divorce. That was transferred to Sub Court, Paramakudi and renumbered as HMOP No.13 of 20213. At that time, the petitioner filed HMOP No.52 of 2008 before the Sub Court, Paramakudi seeking restitution of conjugal rights. That was tried jointly. Divorce petition was dismissed and the restitution of conjugal petition was allowed. There was no appeal. The wife filed MC No.16 of 2014 before the Judicial Magistrate, Paramakudi seeking for maintaining herself and for her children. That was ordered, on 28/03/2019. But no amount was paid so far. Since no proper maintenance amount is paid, the petition filed seeking interim maintenance amount for herself and her children to the tune of Rs.30,000/-,



C.R.P.(MD)No.3097 of 2023

apart from litigation expenses of Rs.15,000/-. The husband is earning more than Rs.1,00,000/- as Government Teacher. Apart from that, he is also having landed property.

3.That was resisted by the petitioner herein that in pursuance of the above said order passed in MC No.16 of 2014, he is paying monthly maintenance amount without any default. The balance amount of Rs.4,02,000/- was also paid in pursuance of the order passed in Tr.CMP No.359 of 2022. So the ground on which, this petition filed is not correct. Apart from that, it is also stated that the wife is an practising Advocate and earning Rs.30,000/- per month. That was also admitted by her during the proceedings in GWOP No.54 of 2019. As per the order of this court in CRP(MD)No.15 of 2023, it must be disposed of within a period of six months. He is ready for complying the above said order.

4.After hearing both parties, the Sub Court, Pudukottai passed an order directing to pay Rs.3,000/- as interim maintenance and litigation expenses of Rs.20,000/-.



C.R.P.(MD)No.3097 of 2023

5.Challenging the above said, this civil revision petition has been filed on the ground that without noting that the wife is a practising Advocate, the above said order was passed. Apart from that, it is also stated that she purposely remained *ex-parte*. So the order is not valid.

7.Heard both sides.

8.A minor issue between the parties has a long history. Not only several litigations are pending between the parties, as stated in the preamble portion of the order, the first application was filed by the petitioner herein seeking divorce in HMOP No.166 of 2008. That was transferred to Sub Court, Paramakudi tried along with HMOP No.52 of 2008 filed by the respondent herein seeking restitution of conjugal rights. A common order was passed dismissing the divorce petition filed by the petitioner, but allowing the petition filed by the respondent herein. The above said order was passed, on 26/02/2016. The matter did not end there. Before that, MC No.16 of 2014 was filed by the respondent herein under section 125 of the Cr.P.C for maintenance. That was allowed subsequent to the dismissal of HMOP, on 28/03/2019 directing the petitioner to pay Rs.3,000/- per month and Rs.6,000/- to



C.R.P.(MD)No.3097 of 2023

the child. Recovery proceedings were also taken. Later, Crl.RC(MD)No.942 of 2019 was filed before this court. Challenging the order passed in Cr.M.P No.4083 2019, a conditional order was passed. That revision was dismissed, on 21/01/2022 directing the petitioner to pay the balance amount on installment basis.

9.Later modification petition was filed in Crl.MP No.2735 of 2022. That was dismissed, on 07/06/2022. In spite of the above said order of restitution of conjugal rights, there was no reunion between the parties. Another round of litigation started by way of filing the present HMOP No.185 of 2021 before the Sub Court, Pudukottai seeking the very same relief of divorce. Pending that matter, only the present impugned order is passed.

10.Even though, the learned counsel appearing for the petitioner would submit that the order passed in MC No.16 o 2014 was not taken into account, so also the profession of the wife, it is admitted by the respondent that she is a practising Advocate and now, she is Government Advocate appearing before the Additional District Court, Paramakudi. But the date of appointment is not clear on record.



C.R.P.(MD)No.3097 of 2023

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11.Now whatever it may be, now the wife is a practising Advocate. Apart from that, she is also acting as Government Advocate, earning money. That cannot be disputed by her. But the question is whether the above said order passed in the maintenance case, must stand in the way of granting the relief under section 24 of the HMOP.

12.Now the matter is no more res-integra, in view of the judgment of the Hon'ble Supreme Court in **Rajnesh vs Neha (AIR 2021 SUPREME COURT 569)**. In the subsequent proceedings of maintenance, the erstwhile order must be taken into account. There can be no quarrel on that aspect. Only meagre amount is ordered in the Maintenance Case, so also in this matter. At the time of final disposal, the concerned trial court may alter or even refuse the amount. It is only an interim order passed by the trial court pending the matrimonial proceedings. But the very nature of filing the second petition for divorce itself is sufficient for the respondent herein to claim additional maintenance amount. So that cannot be found fault.



C.R.P.(MD)No.3097 of 2023

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14.I find no reason to interfere into the order passed by the trial court. Accordingly, this civil revision petition stands **dismissed**, of course with the above said direction.

15.In the result, this civil revision petition is **dismissed**. No costs.

22/02/2024

Index:Yes/No
Internet:Yes/No
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To,

The Sub Court,
Pudukottai.



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C.R.P.(MD)No.3097 of 2023

G.ILANGOVAN, J

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C.R.P (MD) No. 3097 of 2023

22/02/2024