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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.1854 of 2025

and CMP. No.10702 of 2025

R.Jesen Paul Prakash

... Petitioner

Vs.

S.Surya

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 03.03.2025 passed in I.A. No.3 of 2023 in O.P. No.3138 of 2022 on the file of the learned III Additional Principal Family Court at Chennai.

For Petitioner : Mr.Suchit Anant Palande

For Respondent : Mr.M.Muruganantham

ORDER

This Civil Revision Petition is filed to set aside the order dated 03.03.2025 passed in I.A. No.3 of 2023 in O.P. No.3138 of 2022 on the file of the learned III Additional Principal Family Court at Chennai.

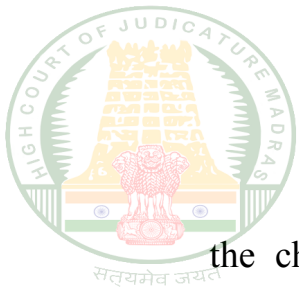


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2. Heard Mr.Suchit Anant Palande, learned counsel for the petitioner and Mr.M.Muruganantham, learned counsel for the respondent.

3. The learned counsel for the petitioner would submit that the very Application that has been taken out seeking interim maintenance under Section 24 of the Hindu Marriage Act in I.A. No.3 of 2023 is not maintainable as framed since the proceedings taken out by the respondent in O.P. No.3138 of 2022 is under the Indian Divorce Act. Secondly, he would state that the petitioner is a student now and he has no independent source of income and he is presently pursuing his higher studies in Canada and that even for such purpose, he has borrowed very heavily and hence, he is not in a position to meet expenses and maintaining the child.

4. The learned counsel for the respondent would submit that mere invocation of a wrong provision of law would not disentitle the wife from seeking interim maintenance, especially when she has sought for interim maintenance only for the child and not for herself. She would also point out that the respondent/wife is meeting all the educational expenses of the child and also the medical expenses that are necessitated, considering the fact that



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the child is pre-autistic child. Documents in support of these claims are also filed along with the typedset of papers and parties also have filed affidavit of assets and liabilities before the Family Court.

5. No doubt, the Family Court has not addressed the objection of the learned counsel for the petitioner with regard to the maintainability of Application under Section 24 of CPC in IDOP proceedings. However mere invocation of a wrong provision of law would not disentitle the respondent/wife from seeking interim maintenance, in the petition filed for Restitution of Conjugal Right, under Section 32 of the Indian Divorce Act, 1869.

6. In view of the above, I do not find that the Application invoking Section 24 r/w 125 Cr.P.C., of the Hindu Marriage Act has to be dismissed on the only ground that appropriate Section viz., Section 41 of the Indian Divorce Act, has not been invoked. With regard to the submission of the learned counsel for the petitioner that the petitioner has already heavily indebted and only a student with no source of income, I am unable to countenance the said submissions advanced by the learned counsel for the



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petitioner. This Court as well the the Hon'ble Supreme Court has time and again reiterated that as long as the husband is able bodied and in a position to get employment and work, he cannot defend the request of interim maintenance emanating from the wife, citing that he is not employed.

7. Moreover, I have also gone through the order of the Family Court, the Family Court has considered the expenses incurred for maintenance of the child and relevant documents have been taken into account and the Family Court, has rightly held that both the parents have a duty to maintain the child and has directed 50% of the maintenance to be made by the petitioner/husband and fixing the sum of Rs.25,000/- payable from the date of filing of the petition.

8. However, learned counsel for the petitioner Mr.Suchit Anant Palande, would bring to my notice that for non compliance of the said order passed by the Family Court, the restitution of conjugal rights petition that has been filed by the petitioner/husband has been struck off. The defence of the petitioner in the divorce OP filed by the respondent was also struck off.



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9. I do not find any infirmity, perversity or illegality in the finding arrived at by the Family Court, warranting interference under Article 227 of the Constitution of India. Considering the fact that the education fees payable to the School where the child is studying is Rs.20,000/- per term and medical expenses per month approximately around Rs.3,000/-, I deem it fit to modify the order of Trial Court from Rs.50,000/- to Rs.40,000/- payable by both the petitioner and the respondent. Each would require to shell out Rs.20,000/-. Arrears shall be paid within a period of eight (8) weeks and subject to the condition that the arrears is paid from the date of interim maintenance petition in I. A.No.3 of 2023, the orders striking of the defence in the divorce petition filed by the respondent/wife and dismissal of HMOP filed by the petitioner/husband for restitution of conjugal rights shall be recalled and further proceedings would be conducted on merits and in accordance with law.

10. Considering the OPs are of the year 2022, a direction is issued to the III Additional Principal Family Court Judge, Chennai to finally dispose of the OP. No.3138 of 2022 & 3163 of 2022 by way of joint trial



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within a period of six (6) months, subject to the husband complying with the orders of this Court regarding payment of maintenance within a period of eight weeks from the date of receipt of the copy of the order.

11. With the above directions, this Civil Revision Petition is disposed of. Connected Miscellaneous Petition is also closed. No costs.

30.06.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

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To

The III Additional Principal Family Court at Chennai.



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P.B.BALAJI.J.,

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