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C.R.P.(NPD) No.5358 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.5358 of 2024

1. Nirmala @ Aisha Afsar Riyaz
2. Minor Aalia Afsar Ebithihar
3. Minor Aafia Afsar Ebithihar ... Petitioners/Petitioners/Plaintiff

-VS-

Mr.Afsar Riyaz Ebithihar ... Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 20.09.2024 made in E.P.No.75 of 2024 in I.A.No.2008 of 2016 in O.S.No.219 of 2015 by the III Additional Principal Family Court, Chennai.

For Petitioners : Mr.B.Vignesh

ORDER

A challenge has been made to the impugned order passed by the Executing Court in E.P.No.75 of 2024 in I.A.No.2008 of 2016 in O.S.No.219 of 2015.



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Brief background of the case

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2. The Revision Petitioner had filed an application for interim maintenance in I.A.No.2008 of 2016 in O.S.No.219 of 2015 before the III Additional Family Court, Chennai. Originally, an interim maintenance of Rs.10,000/- was awarded and in appeal in C.M.A.No.1125 of 2018, the amount has been enhanced to Rs.20,000/- payable to each of the petitioners with effect from the date of petition dated 23.02.2016 to 29.06.2018 and it appears that in the said Execution proceedings, a sum of Rs.33,50,000/- had been paid by the respondent husband and to be precise, a sum of Rs.9,61,800/- was paid in excess.

3. Thereafter, an Execution Petition has been filed by the wife for payment of arrears of maintenance for the period from August, 2022 to February, 2024 to the tune of Rs.11,40,000/-. The Executing Court passed an order, deducting the amount of Rs.9,61,800/- paid in excess and directed payment of Rs.1,78,200/- alone to the revision petitioners.

4. Learned counsel for the petitioners submitted that the order granting decree of divorce was passed only on 13.02.2024 and till disposal,



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the interim maintenance ordered is liable to be paid. The Executing Court has not calculated the arrears from the date of interim orders and just carried away by the observation made in the earlier order in E.P.No.73 of 2019. Hence, he sought for remand of the matter to the Executing Court so as to enable the petitioners to file necessary calculation memo and give quietus to the issue.

5. I have perused the material documents available on record.

6. The revision petitioner had initially filed E.P.No.73 of 2019, claiming arrears of amount of Rs.23,88,200/- for the period from 22.02.2016 to 29.06.2018. It is an admitted fact that the amount of interim maintenance has been enhanced to Rs.20,000/- payable to each of the petitioner. Though a sum of Rs.9,61,800/- is stated to be paid in excess in E.P.No.73 of 2019, the fact remains that the suit has been disposed of only on 13.02.2024. Therefore, till the disposal of the suit, the interim maintenance ordered by the Court needs to be paid by the respondent and this aspect has not been considered by the Executing Court. Though in the



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earlier Execution Petition, the Trial Court ordered to adjust the excess amount, till the disposal of the suit, it has not been done. Therefore, the order of the Executing Court is liable to be set aside and the matter to be remanded back to the Executing Court for fresh consideration.

7. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 20.09.2024 made in E.P.No.75 of 2024 in I.A.No.2008 of 2016 in O.S.No.219 of 2015 by the III Additional Principal Family Court, Chennai, is set aside. The matter is remanded back to the Executing Court, which shall consider the calculation memos to be filed on either side and thereafter, pass afresh orders after giving an opportunity of hearing to the parties concerned. No costs.

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Index: Yes / No

Internet: Yes / No

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To:

III Additional Principal Family Court Judge,
Chennai.

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