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**(2011) 08 MAD CK 0235**

**Madras High Court (Madurai Bench)**

**Case No:** C.R.P. (PD) (MD) No. 1115 of 2008 and M.P (MD) No. 1 of 2008

Dr. Prabhu Srinivasan

APPELLANT

Vs

Ramaprabha

RESPONDENT

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**Date of Decision:** Aug. 29, 2011

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** K. Balasundaram, for the Appellant; D. Rajagopal, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The revision Petitioner has filed the above revision to set aside the fair and decretal order dated 14.03.2008 in I.A. No. 8 of 2007 in H.M.O.P. No. 69 of 2004 on the file of the Additional Subordinate Judge, Kumbakonam, Thanjavur District.

2. The brief facts of the case are as follows:

The revision Petitioner/husband has filed H.M.O.P. No. 69 of 2004 against his wife for divorce for dissolving the marriage which was solemnized on 06.02.2003 between the Petitioner and Respondent on the ground of cruelty. The said case has been filed before the Principal Subordinate Court, Kumbakonam. The Respondent/wife had filed counter statement and resisted the divorce petition. while so, the Respondent/wife has filed an interlocutory application in I.A. No. 8 of 2007 in H.M.O.P. No. 69 of 2004 on 05.06.2007 for interim maintenance of a sum of Rs. 70,000/- per month to her child and herself. Besides the Respondent/wife has also prayed for payment of a sum of Rs. 1,50,000/- for contesting the case and a further sum of Rs. 1,00,000/- for dress, medical expenses and for festival expenses.

3. The revision Petitioner/husband has filed counter statement and opposed the interim maintenance case on various grounds. The learned Judge, after hearing the

arguments of the counsels on both the sides and on perusing the averments of both the parties, allowed the interlocutory application in part, stating that the revision Petitioner/husband has pay Rs. 10,000/- per month as maintenance to his wife, and another Rs. 10,000/- per month as maintenance to his son. The learned Judge had also ordered for payment of a sum of Rs. 50,000/- by the husband as litigation charges to his wife.

4. Aggrieved by the said decree and decretal order, the above revision petition has been filed by the revision Petitioner. The Learned Counsel for the Petitioner argued that the Respondent is also a qualified doctor and she is economically well off. As such, the interim maintenance order is not sustainable. The learned Judge, erroneously had ordered for payment of a sum of Rs. 20,000/- towards maintenance to the Respondent and the child. This amount is on the higher side since the revision Petitioner does not have sufficient income from his profession to comply with the order. The revision Petitioner is not even getting a sum of Rs. 5000/- per month through his profession. The Respondent is running a clinic and had employed assistant doctors, nurses, and technicians including driver. It clearly proved that the Respondent gets sufficient income through her profession. Therefore, the Respondent/wife is not entitled to receive any maintenance from the revision Petitioner.

5. The Learned Counsel for the Respondent/wife argued that the Respondent has joined in a master degree course and as such she is a student, and not an earning doctor. Further, the child is with the Respondent and she has to provide good education, dress and rich food to the child. Therefore, the revision Petitioner is liable to pay maintenance to the Respondent and the child. The learned Judge, after considering the contentions laid down on both sides had passed the interim maintenance, to the Respondent. This order is a well considered one. As per order of the learned Judge, the revision Petitioner is liable to pay about Rs. 10,00,000/- i.e., from the date of filing the interim maintenance application till date, but the revision Petitioner has wantonly and deliberately evading payment of maintenance, even though he gets sufficient income.

6. In view of the facts and circumstances of the case and arguments advanced by the Learned Counsel on either side and on perusing the impugned order of the learned Judge, this Court is of the considered opinion that the learned Judge had ordered for a sum of Rs. 10,000/- to be paid as maintenance to the child, which is fair and justifiable.

7. Regarding the maintenance to the Respondent/wife, the learned Judge has to conduct a detailed enquiry after recording evidence from the revision Petitioner and the Respondent as to whether the Respondent gets sufficient income to maintain herself and also find out the revision Petitioner's gross income and decide the issue. Therefore, the maintenance granted to the wife, i.e., a sum of Rs. 10,000/- per months from the date of maintenance application till date is set aside. Regarding

the litigation charges, a sum of Rs. 50,000/- has been awarded by the tribunal, which is on the higher side. Hence, this Court reduces the amount granted towards litigation charges to Rs. 25,000/- as it is found to be fair and justifiable. This Court further directs the revision Petitioner to pay the monthly maintenance a sum of Rs. 10,000/- to his son, as per learned Judge order, from 05.06.2007 till date; along with litigation charge of a sum of Rs. 25,000/- out of this total amount, the Petitioner shall pay a sum of Rs. 2,50,000/- within a period of four weeks from the date of receipt of this order by way of demand draft drawn in favour of the Respondent/wife. The balance of maintenance payable to the child shall be cleared within a period of seven months from the date of receipt of this order. Accordingly ordered.

8. In the result, the above revision petition is allowed in part with the above observations. Consequently, the order and decretal order passed in I.A. No. 8 of 2007 in H.M.O.P. No. 69 of 2004 on the file of the Additional Subordinate Court, Kumbakonam is modified. Connected miscellaneous petition is closed. There is no order as to costs.