**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : 19.07.2024
PRONOUNCED ON : 02.09.2024
Coram

**THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN**

C.R.P.(PD).No.2660 of 2024 &
C.M.P.No.13976 of 2024

xxxxxxxxxxxxxxxx ... Petitioner

-Versus-

xxxxxxxxxxxxx ... Respondent

**Prayer**: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 06.12.2023 passed by the (FAC) Judge, Family Court, at Udhagamandalam in I.A.No.3 of 2023 in O.P.No.4 of 2022.

*For Petitioner : Ms.Gopika Nambiyar*

**ORDER**

This civil revision petition raises a very interesting question of law. The question being whether a Muslim wife, who had presented a plaint in terms of Section 2(viii) of the Dissolution of Muslim Marriage Act, 1939, is entitled to receive an interim maintenance pending disposal of the said proceedings.

2. There is no dispute in the relationship between the parties. The civil revision petitioner is the husband and the respondent is the wife. They married each other on 07.09.2015 at Giriappa Kalayana Mandapam, Udhagamandalam, The Nilgiris. The marriage was an arranged one. From the wedlock, a girl child was born on 11.10.2016. At the time of marriage, the respondent /wife was working at Tata Consultancy Service, and the husband was pursuing his specialisation in Pediatric Cardiology.

3. According to the respondent/wife, her husband and sister-in-law used to treat her unfairly and she suffered from physical and verbal assault at their hands. Therefore, she was constrained to leave the matrimonial home and return to her parental home at Udhagamandalam. On reaching Udhagamandalam, she started to work at Zomato Private Limited as a City Growth Manager. The husband moved to Kochi from Belgaum to pursue his further studies at Amirtha Institute of Medical Sciences. On his assurance that he would treat her fairly, the respondent/wife joined him at Kochi.

4. The respondent/wife would plead that contrary to the assurance given by the husband, he continued to ill-treat her and the child. It was in the form of physical, verbal, emotional and economical abuse. On the day of completion of

his super speciality examination, he informed the respondent/wife that he is returning to Belgaum along with the child. The wife refused to return to his hometown and this enraged the husband, who beat her black and blue and took the daughter away to Belgaum.

5. When the respondent/wife attempted to contact the child, she was not able to do so, and the petitioner refused to permit her to talk with the child. Finding the situation intolerable, the parents of the respondent/wife intervened and attempted to work out a solution. As the situation did not improve, the plaintiff left Kochi and returned to Udhagamandalam.

6. On 2nd August 2022, the civil revision petitioner/husband attempted to restore the matrimonial status. The respondent/wife also attempted to rejoin him with a fond hope of a happy future. Unfortunately, it was belied. As she was abused physically and verbally, she left along with her daughter back to Udhagamandalam. The daughter is currently studying at Crescent Castle Public School, (ICSE Campus) at Udhagamandalam. Since the wife suffered at the hands of the husband, she decided to initiate proceedings under Section 2(viii) of the Dissolution of Muslim Marriage Act, 1939.

7. The specific plea of the wife is that she is looking after all her expenses and needs. She would allege that the husband is not taking any interest in their daughter and that the expenses for school fees, books, uniform, etc., are being borne by her. The respondent/wife would plead that the husband is residing in Belgaum and is earning about Rs.2,00,000/- a month.

8. On being served with the summons, the civil revision petitioner/husband filed a detailed written statement. As is to be expected, the defendant denied all the allegations. He would state that it was the respondent/wife who had created all the problems and had been twisting the facts in order to approach the court. He would plead that he had been advising the respondent/wife to be patient, in her ways and approach, towards the members of his family.

9. The civil revision petitioner/husband would plead that the respondent/ wife is a very quarrelsome person, who would pick a fight with everyone at the drop of the hat and had a habit of slapping her husband on multiple occasions. The civil revision petitioner attributed the same to post-partum symptoms and on that basis justified her otherwise unacceptable behaviour. He would admit that DVC.No.1 of 2017 had been filed by the wife, but would state that it

was withdrawn after mediation took place between the parties.

10. The civil revision petitioner/husband would categorically assert that the respondent/wife never maintained a good relationship with his sisters and wanted to portray them in a negative light at all available opportunities. As her father had fallen sick, the wife had requested him to let her return to Udhagamandalam and he accepted the same. He found that after she returned to her parental home at Udhagamandalam, her attitude changed entirely. She was demanding that he take up a job at Kochi and only then, it would make her happy. He would plead that the couple had been very happy during their month-long stay in Belgaum.

11. When the civil revision petitioner/husband revealed that he had been placed in a very respectable position in a famous hospital at Belgaum and that he wanted to return there as the said offer was better than the position that he was holding at Kochi, she refused to continue to live with him. He would state that he begged and pleaded her not to abandon him, but unfortunately it fell on deaf ears. As he did not want to risk his career and reputation, he reluctantly went to Belgaum and took up the job at famous KLE hospital.

12. The civil revision petitioner/husband would accept that he is not paying the school fees and other related expenses of the child as he had not been consulted with regard to the same and he was not aware about the institution at which the child was studying.

13. The civil revision petitioner/husband would state that he is also working in the honorary position of Assistant professor in Jawaharlal Nehru College at Belgaum. In addition to this position, he is also a consultant in KLE Hospital. He is well known in his field of expertise of Pediatric Cardiology and has been acclaimed internationally for publishing several papers in his area of expertise. He would assert that he had been invited as a speaker in many prestigious conferences throughout the country, which are testimony to his academic brilliance and dedication to his profession. On these grounds, he would plead that the suit be dismissed.

14. After the written statement had been filed, the respondent/wife filed an application stating that the monthly expenses for herself and her child comes to around Rs.50,000/- and that, she was jobless as she lost her employment with Zomato Private Limited. She would state that she was handling all the expenses

of herself and her daughter from and out of her savings and now she is unable to do so. She would plead that she is now amidst a severe financial crisis with 'nil' savings and is unable to support herself and her daughter. She would specifically allege that the husband is a consulting Pediatric Cardiologist at KLE hospital and also an Assistant Professor at Jawaharlal Nehru College, Belgaum and is earning a handsome salary of Rs.2,50,000/- per month. Therefore, she sought an interim relief of Rs.50,000/- per month towards maintenance of herself and her daughter and Rs.10,000/- as litigation expenses. This application was received in I.A.No.3 of 2023.

15. Notice was ordered to the civil revision petitioner/husband and he filed a detailed counter.

16. The civil revision petitioner/husband would plead that the respondent/wife had deserted the marital home on her own accord and had thereafter refused to stay in contact with him. He would plead that it was the wife who had left the matrimonial home unannounced along with her child and cut off ties with the husband. He would state that he is the only son of his parents as his siblings are sisters. He would claim that it is his paramount duty to provide for his parents in their old age and also to take care of his divorced

sister, who is staying with him. He would also state that it is his duty to arrange her marriage.

17. On the financial aspects, the civil revision petitioner would state that he had taken a loan for his educational expenses to the tune of Rs.58,00,000/-. He would also state that he has applied for a housing loan and another loan to buy a USG machine and in all, he is currently in debt to the extent of Rs.1 crore, which he has been repaying from his income.

18. Finally, the civil revision petitioner/husband would urge that there is no provision of law enabling the wife to seek interim maintenance under Section 151 of the Code of Civil Procedure. He would refer to a judgment of the Supreme Court in ***State of U.P. v. Roshan Singh, (2008) 2 SCC 488*** and that of the Kerala High Court in ***Naushad Flourish vs. Akila Naushad and another, 2023 SCC Online Ker 9059*** to plead that the wife is not entitled to be paid any amount.

19. The learned Judge took the application for enquiry. He heard the counsels. Before the learned Trial Judge, neither the husband nor the wife entered the witness box, nor did they file any documents.

20. On consideration of the status of the parties, especially their social

needs, financial capacity and other obligations, he awarded a maintenance of Rs.20,000/- per month so as to enable the wife to live with dignity and comfort and granted Rs.10,000/- as litigation costs. This order was passed on 06.12.2023, against which the present revision.

21. I have heard Ms.Gopika Nambiyar for Mr.Sharath Chandran appearing on behalf of the petitioner.

22. Ms.Gopika Nambiyar would plead that Section 151 of the Code of Civil Procedure cannot be utilised for ordering interim maintenance. She would rely upon a judgment of the Bombay High Court in ***Shabbir Ahmed Sheikh Ibrahim vs. Smt. Shakilabanu, (1985) 2 DMC 13*** and Madhya Pradesh High Court in ***Mohd. Hasan vs Kaneez Fatima, ILR (2018) M.P. 1930***. She would also rely upon the recent judgment of the Supreme Court in ***Mohd. Abdul Samad vs. State of Telangana and another, (2024) SCC Online SC 1686***. She would state that as Section 151 of the Code of Civil Procedure provides only procedural relief and not any substantive relief, the learned Trial Judge erred in ordering maintenance invoking Section 151. Therefore, she would plead that the order of the learned Trial Judge is without jurisdiction and hence, requires

interference.

**Position of maintenance under Pristine Islamic Law**

23. A classic book in Islamic jurisprudence is *Al-Durr al-Mukhtar Sharh Tanwir al-Absar*. This was a book which was written soon after Islam laid its foundation in the World. The book is also popularly known as *Durr ul-Mukhtar*. The meaning of this term is 'the chosen pearl'. This book is actually a commentary of another book *Tanwir al-Absar*, which was written by Mohammed Bin Abdullah Tamartashi. It is considered as one of the books which has explained the fundamental principles of Islamic jurisprudence in Hanafi school.

24. According to Durr ul-Mukhtar, the wife is treated as the "*asl*" (root) and the children are considered as the "*far*" (branch) for the purpose of maintenance. This implies that the wife is given priority in receiving maintenance. As per the Pristine Islamic law, the wife is entitled to maintenance from her husband, even if she has the means to maintain herself. This duty of the husband to maintain the wife continues, even if he does not have sufficient means. The duty of the husband to maintain the wife commences from the time she attains puberty. The law demands that the wife be obedient and allow her

husband free access at all lawful times. It also states that in case the wife deserts her husband, she loses her right to maintenance. In case a Muslim husband refuses to pay maintenance to his wife, the wife by law is entitled to sue him for the same.

25. Insofar as India is concerned, two books are considered fundamental for reference viz., Islamic Jurisprudence. They are Hedaya and Fatawa-E-alamgari. According to the eminent jurists, who have written these books, while fixing the sum for maintenance, the Court has to take into consideration the status and the circumstances of both the spouses. Therefore, this position is being referred to for the purpose of concluding that even under if Pristine Islamic Law, a wife is entitled to maintenance.

26. Insofar as the parties are concerned, they are Muslims. After the enactment of the Muslim Personal Law (Shariat) Application Act of 1937, the parties would have to be governed only by Muslim Personal law in matters covered under Section 2 of the Act. Maintenance is covered under Section 2 of the Act. Hence, the rule of decision in such cases should be as per Shariat.

27. Tyabji, in his work Principles of Muhammadan Law, would state that

the wife who is regularly married, and who has attained an age at which she can render to the husband his conjugal rights is entitled to receive maintenance from him, in accordance with her health and position in life and the husband's means. According to him, in determining the scale of maintenance due from the husband to the wife, Hanafi law requires that the social position of both the husband and wife be considered. This view finds reflection in Hedaya as well as Sharh-e-wiqaya. They also refer to a Hadith for this purpose.

28. The Holy Prophet is said to have narrated to Hinda, the wife of Abu Safyan, as follows:

*"Take from his property what is required for thy needs and the needs of thy child".*

29. This Hadith finds reference in the work of Bukhari as well as the Muslim. Tyabji further develops that the wife does not lose her right to receive maintenance, even if she refuses access to her husband on some lawful grounds. This discussion shows that the view that has been taken by the Bombay High Court referred to by Ms.Gopika Nambiyar perhaps is not in line with the statements of the Holy Prophet.

30. In fact, in paragraph 12 of the said judgment, the learned Judge has taken the view that under Muslim Law, there is no vested or substantive right to maintenance for a wife. He has also opined that the Courts do not have the power to grant interim maintenance pending a decision in a suit for restitution of conjugal rights filed by the husband. I will shortly be referring to the views taken by a Division Bench of this Court. These judgments have taken a view where the relationship is admitted, the Courts have the power under Section 151 of the Code of Civil Procedure to grant interim maintenance. In addition, the verdict of the Bombay High Court was rendered before the view of Justice E.S.Venkataramiah in ***Savitri v. Govind Singh Rawat, (1985) 4 SCC 337*** where his lordship had observed that the Courts have inherent power to grant interim maintenance.

31. The view taken by Bombay High Court had been merely followed in ***Mohd. Hassan v. Kaneez Fatima, ILR (2018) MP 1930***. The learned Judge who dealt with the writ petition in Jabalpur had not referred to the view of the Madras High Court or the views taken by the Supreme Court, subsequent to the judgment of the Bombay High Court.

32. When I have a direct authority of the Madras High Court and that too of a Division Bench, I necessarily have to follow the view taken by this Court and not be swayed by contra views taken by other High Courts. In any event, since I find that the Hadith and the views of the Islamic scholars support the right of maintenance of the wife and child, I am not inclined to accept the submissions of Ms.Gopika Nambiyar.

33. I shall now turn to the discussion on the other aspects which govern this case.

34. A short discussion on the history of the Dissolution of Muslim Marriage Act, 1939, under which the main petition has been filed, would be necessary in order to reach a conclusion in this case.

**History of the Dissolution of Muslim Marriage Act, 1939**

35. This country is governed mostly by Hanafi school of Islamic law. Prior to the enactment of Dissolution of Muslim Marriage Act, 1939, there was no provision in the Hanafi School enabling a Muslim wife to obtain a decree for divorce from a civil court to dissolve her marriage. This was even in case the husband neglected to maintain her and made her life miserable by deserting her

or persistently maltreating her or other such circumstances. On account of the absence of such provisions, innumerable Muslim women were reduced to unspeakable misery.

36. The jurists belonging to Hanafi School took a view that in the absence of provisions to apply for divorce, the Courts were not barred from applying the principles which applied to the other three schools. To put it clearly, in cases where application of Hanafi Law will lead to hardship, they opined that it is always permissible for the Court to apply principles applicable to those belonging to Maliki, Shafi, or Hanbali schools of Islam.

37. The Maliki school provided for a woman belonging to that school to apply for divorce. However, the courts were hesitant to apply Maliki law for those belonging to Hanafi school. Despite the fact that several fatwas had been issued at that time, the courts refused to accept the same. Therefore, the representatives of the Muslim community approached the competent authorities. Taking into account the difficulties that were being faced by Muslim women, the Dissolution of Muslim Marriage Act was enacted.

**The nature and scope of Section 2(ii) and 2(iv) of the**

**Dissolution of Muslim Marriage Act, 1939**

38. One of the grounds on which divorce can be obtained is Section 2(ii) of the said Act. Under the said provision, if a husband neglects or fails to provide maintenance for a period of two years, the wife is entitled to a decree of divorce.

39. It is pertinent to point out the difference between Sections 2(ii) and 2(iv) of the said Act. Under Section 2(ii), it is the duty of the husband to maintain his wife, whereas under Section 2(iv), the wife will have to prove that the husband has failed to perform his marital obligations without a reasonable cause. This shows that the duty to provide maintenance to the wife is an obligation on the husband if he intends to keep the relationship intact. The legislature, in its wisdom, did not include the restriction found in Section 2(iv) i.e., "without a reasonable cause" in Section 2(ii). This matter is no longer *res integra*. It has been interpreted by the High Court of Andhra Pradesh in ***Ahmed Abdul Qadeer v. Raffat Banu, AIR 1978 AP 417*** and by the Kerala High Court in ***Ittoochalil Meethal Moossa v. Pachiparambath Meethal Fathimas, AIR 1983 KER 283***.

40. The very fact that the words "without reasonable cause" is absent

under Section 2(ii) of the Dissolution of Muslim Marriage Act shows that it is the duty of the husband to maintain his wife and if he fails to do so, he would have to face the unpleasant situation of his wife suing him for divorce on that ground. The aspect of Section 2(ii) had not been taken into consideration in both the judgments of the Bombay High Court in ***Shabbir Ahmed***'s case or of the Madhya Pradesh High Court in ***Mohd. Hasan'***s case.

41. Insofar as the judgment in ***Mohd. Abdul Samad***'s case is concerned, it did not deal with the issue of grant of interim maintenance at all. The issue before the Supreme Court was whether the provisions of Section 125 of the Code of Criminal Procedure, under which the respondent/wife had been granted maintenance in that case, would prevail over the Muslim Women (Protection of Rights on Divorce) Act of 1986. Therefore, the reliance placed upon by Ms.Gopika Nambiyar on these authorities is misplaced. The first two judgments did not refer to the Dissolution of Muslim Marriage Act, 1939 and the Supreme Court did not deal with the said issue at all.

**Right to seek maintenance under Section 151 of the Code of Civil Procedure**

42. Insofar as the right of a person to seek maintenance under Section 151

of the Code of Civil Procedure is concerned, I am able to trace the posititon of law from the judgment of the Patna High Court in ***Maharaj Kumar Gopal Saran Narayan Singh vs. Sita Debi, 77 I.C. 718*** and few authorities of the Madras High Court, which I shall refer to shortly.

43. In the case before the Patna High Court as referred above, the plaintiff sued on a maintenance agreement and the defendant therein pleaded that the plaintiff is not entitled to any payment, since there were disputed facts. The Court held that it is not open to grant interim maintenance as there were contentious issues. This view had been followed by the Madras High Court in CRP.No.1312 of 1930, wherein Justice Jackson held as follows:

> *"A Court cannot interfere with a private person's property merely because he happens to be a defendant, on behalf of another person merely because he happens to be a plaintiff. There is no inherent power in a Court to act without findings, so that if a matter is asserted by the plaintiff and denied by the defendant, the Court cannot presume that the plaintiff's allegations are true and give some interim relief pending disposal of the suit."*

44. This issue subsequently resurfaced before this Court in ***Sri Rajah Yenumala Latchanna Doravaru vs. Sri Rajah Yenumala Mallu Doravaru in***

***(1940) 52 L.W. 487.*** In the said case, Justice Horwill was presented with a situation where the plaintiff sued his brother and father for his right over certain properties. In the alternative, he also pleaded for partition. The defendants denied that the plaintiff had any right over the properties and pleaded that the only property that the plaintiff therein was entitled to was found in schedule I of the said suit. After the pleadings were complete, the plaintiff filed an application for interim maintenance of Rs.800/- per month and the court awarded Rs.250/- per month. The authorities of Patna High Court as well as the judgment of Justice Jackson were referred to by the learned Judge. The learned Judge held that a Court is empowered under Section 151 of the Code of Civil Procedure to grant interim maintenance in proportion to the property admitted as belonging to the plaintiff. He did not hold that the Court does not have the inherent power to grant maintenance, but held that maintenance can be granted when the relationship between the parties is not in dispute.

45. The issue whether the Court has inherent power to grant maintenance in exercise of Section 151 was again put to controversy before the Division Bench of this Court headed by Rajamannar C.J and Venkatarama Aiyar J. in ***Hajee Mahomed Abdul Rahman v. Tajunnissa Begum, (1953) 66 L.W. 40.*** The facts leading to the appeal were Justice Panchapakesa Aiyar, dealing with a

suit claiming maintenance, ordered a sum of Rs.500/- a month as interim maintenance. He did so, despite the fact that the husband had taken a specific stand that he had never married the plaintiff. Aggrieved by the order of interim maintenance, an appeal was preferred before the Division Bench. The bench, while allowing the appeal, held that there is no inherent jurisdiction in the court to grant interim maintenance pending disposal of a suit for maintenance by the wife where the claim itself is disputed on the ground that there was no marriage at all. They held so in the following terms:

> *"... there is overwhelming authority for the position that when the claim made in the plaint is contested, the Court has no inherent jurisdiction to grant relief until that claim is determined on its merit and that can only be by the final hearing in the suit. ... We are accordingly of the opinion that the order of the learned Judge granting interim relief in the suit in which the claim of the plaintiff is hotly contested, was without jurisdiction."*

In the same case, the court approved the view taken by Justice Horwill in ***Sri Rajah Yenumala Latchanna Doravaru***'s case.

46. A perusal of these judgments would lead us to the conclusion that in case the claim of maintenance by a person claiming to be the wife is contested by the husband stating that there is no marriage at all, then the Court cannot

grant interim maintenance as the same requires the Court to come to a conclusion that there in fact exists a marriage and consequently, fix the liability on the husband to maintain his wife. However, as seen from the judgment of Justice Horwill, which found acceptance at the hands of Rajamannar, C.J., and Venkatarama Aiyer. J., in case the relationship is not in dispute, there is no bar for the Court to grant maintenance in exercise of its inherent power.

47. In order to complete the narration, I only have to refer the Full Bench Judgment of Andhra Pradesh High Court in ***P.Srinivasa Rao vs. P.Indira and another, AIR 2002 AP 130 (FB)***. The matter related to the grant of interim maintenance to a Hindu wife. Though there was no specific provision in the Hindu Adoptions and Maintenance Act of 1956 to grant interim maintenance, Justice S.B.Sinha (as His Lordship then was) after referring to a vast number of authorities came to a conclusion that under Section 151 of the Code of Civil Procedure, the Court has inherent power and jurisdiction to grant interim maintenance to the wife and children. The bench went on to hold that the inherent power of the Court under Section 151 of the Code of Civil Procedure, by necessary implication, empowers the Court to grant maintenance to the wife and minor children where circumstances so warrant and justify on a prima facie satisfaction of the case on merits.

48. In a concurring judgment, Justice N.V.Ramana (as his lordship then was) held as follows:

> *"... there cannot be any doubt regarding the inherent powers of the civil Courts in the matters before it. The civil court can exercise such inherent powers with the only limitation that it should not be inconsistent with other provisions of the code of Civil Procedure of contrary to any other law."*

He further held that granting interim maintenance in a suit for maintenance is not inconsistent with any provision of the Code of Civil Procedure or contrary to any other law. Having come to this conclusion, the Full Bench overruled the Division Bench Judgment of that Court in ***G.Appana vs. G.Seethammal, AIR 1972 AP 62***.

49. In ***Padam Sen vs. State of Uttar Pradesh, AIR 1961 SC 218,*** the court held as follows:

> *"The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the code. They are complementary to those powers and therefore it must be held that the court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the*

*intentions of the Legislature.”*

50. This view stood affirmed by another judgment of the Supreme Court in ***Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527*** (Four Judges Bench). The Court held as follows:

> *“The inherent powers are not in any way controlled by the provisions of the Code as has been specifically stated in Section 151 itself. But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the legislature. This restriction, for practical purposes, on the exercise of those powers is not because those powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the legislature for orders in certain circumstances is dictated by the interests of justice.”*

51. A reading of Section 151 of the Code makes it clear that it can be invoked in order to pass orders, which are necessary to meet the ends of justice. The word “inherent” implies that it does not require a Section to confer the specific power on the Court, but it inheres by the very existence of the Court. It is something, which is basic or permanent to the Court, and it cannot be removed. The inherent power of the Court is merely recognised by Section 151.

Even without the said section, the Court will continue to have the power as it inheres in it in the matter of things. Therefore, the statement of Ms.Gopika Nambiyar that there is no power to grant interim maintenance is not supported by the weight of authorities of the Supreme Court, this Court and as referred to above, a Full Bench of Andhra Pradesh High Court.

52. Now turning to the facts of the present case, the relationship between the parties is not in dispute, neither is the exalted status of the husband. The factum of marriage between the parties on 07.09.2015 at Udhagamandalam is admitted. The birth of the girl child on 11.10.2016 is also admitted. In addition, the husband himself has accepted that he is working as a consultant in the department of Pediatric Cardiology, a highly specialised area, at the famous KLE hospital at Belgaum and also working as an Assistant Professor at Jawaharlal Nehru Medical College. When the marriage has been admitted and also the birth of the child, then it becomes the duty of the husband to maintain his wife and child. This is not only by virtue of the pristine Islamic law, but also on account of the statutory duty imposed under the Dissolution of Muslim Marriage Act as is seen from Section 2(ii) of the said Act.

53. As discussed above, while the words " without any reasonable cause"

is present in Section 2(iv), it is absent in Section 2(ii). Therefore, the duty of the husband to maintain his wife is continuous and in case he does not maintain her for a period of two years, he faces the wrath of Section 2(ii).

54. A reading of the counter in the present case discloses that the husband is not maintaining the wife and child. The defence that he takes is he was not aware about the expenses that the child would incur. The wife has given the details of the expenses being incurred by her in the affidavit. Apart from a vague denial, the counter does not state that the expenses that were being stated by the wife are either inflated or artificial.

55. As pointed out by Justice S.B.Sinha, there may be cases where the wife would require additional monetary support to provide for medical assistance to herself and for the child. In the absence of any maintenance, the wife or the child might not even survive to see the end of the litigation. If I were to accept the argument of Ms.Gopika Nambiyar that there is no provision under the Code of Civil Procedure or Dissolution of Muslim Marriage Act to grant interim maintenance to the wife, I will be reducing the status of the wife and trampling on her right to exist.

**Socio-economic Justice and right to interim maintenance**

56. For the mere fact that in 1939, a colonial central legislation did not make a provision for grant of interim maintenance does not mean the Courts are powerless. After having gone through a peaceful revolution on 26th January 1950, the Constitution demands that each of its citizens be entitled to justice-social, economic and political. The Courts have to inform themselves about the social and economic justice that the wife is entitled to, while interpreting the right to claim for interim maintenance. A Court cannot shut its eyes, when the wife pleads before it that she is unable to maintain herself. If the interpretation of Ms.Gopika Nambiyar is accepted, then the wife would be thrown to the wolves and would have to run from pillar to post in order to secure a basic right which is the right to live with decency and dignity.

57. As to what are the principles on the basis of which maintenance must be granted have been settled by a catena of judgments. The wife is entitled to live in the same circumstances and social status if she would have continued to live in the matrimonial home. For the mere fact that she has been separated from her husband does not mean she has to spend for herself. For the mere fact that the respondent/wife was born in the Muslim community does not mean she is not entitled to maintenance. In fact, the Holy Prophet had specifically held

that divorce amongst Muslims, though permitted, is the most hateful sight of God.

**Purposive interpretation of the Dissolution of Muslim Marriage Act, 1939**

58. A perusal of the statement of object and reasons of the Dissolution of Muslim Marriage Act leads me to a conclusion that the legislation was brought in only for the purpose of ameliorating the status of the Muslim women. Therefore, while interpreting the same, precedence has to be given to the inherent powers of the Court and to the intent of the Legislation under which the wife has approached the Court seeking divorce.

59. The Act was brought forth to improve and ameliorate the social condition of Muslim women. Therefore, the provisions of the said Act must be interpreted in light of the object for which the Act is introduced. In light of the same, this Court cannot render an interpretation that would defeat the object of the said Act by deferring to grant interim maintenance. In fact, the Act itself specifically provides a provision for grant of divorce on the account of non-payment of maintenance.

**Section 26 of the Domestic Violence Act and grant of interim maintenance**

60. Dehors all these provisions, I am bound to take notice of Section 26

of the Protection Of Women From Domestic Violence Act, 2005. The said provision reads as follows:

> "*26. **Relief in other suits and legal proceedings.**—*
>
> *(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*
>
> *(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.*
>
> *(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."*

61. The said provision makes it clear that the reliefs of protection order, residence order, monetary relief, custody order and compensation order can also be sought for before Civil Court, Family Court, or Criminal Court. Section 22 makes it clear that any of the said reliefs would be in addition to and can be granted in addition to any of the reliefs that may be sought for in a civil or a criminal court. Interpreting Section 26 (1) and Section 26(2), I am able to

perceive that the Family Court can give a direction to the husband to pay monetary relief to meet the expenses incurred and can also grant interim maintenance in terms of Section 20 (d) of the Act.

**Understanding right to maintenance within the Constitutional framework**

62. It is a demand in terms of Part IV of the Constitution that the State shall secure the operation of the legal system so as to promote justice on the basis of equal opportunity. This is by virtue of Article 39A of the Constitution of India. I necessarily have to inform myself of the constitutional provisions while disposing this revision under Article 227 of the Constitution of India.

63. Here is the case where the wife pleads that she is unable to maintain herself and her child, and seeks maintenance. If I were to deny the maintenance on technical grounds, it will not amount to promotion of justice and certainly would not amount to giving an equal opportunity. The husband is, as pointed out above, a highly qualified Pediatric Cardiologist. He would have vast resources at his disposal. The purpose of granting interim maintenance in a litigation is to enable her to survive and fight the litigation.

64. Grant of maintenance is in a way granting an equal opportunity and

making the litigative playing field equal. I am able to visualize the situation, if the litigant is asked to litigate the matter as against taking care of her child, obviously the latter will become more important. If she is provided with sufficient maintenance for herself and her child, then she can concentrate on the litigation. By directing the husband to pay interim maintenance to the wife, I am only leveling the playing field as stated above. I feel, this would ensure a legal system providing an equal opportunity in order to promote justice.

65. It is the duty of the husband to bring up his child giving her a proper environment. Whether the husband had any valid reason to separate from his wife is a matter which has to be proved at the time of trial. As I have already stated, the wife and child would have to survive till the disposal of the case. The petitioner/husband has admitted that the father of the respondent/wife is sick, which means the entire burden of bringing up the child is going to fall on the wife. Admittedly, the husband is not giving any physical or financial assistance in this aspect. At least the husband should bear a part of the financial burden in bringing up a girl child. I feel that Courts are not powerless in ordering maintenance so as to enable the parties before it to survive the litigation.

**Role of justice, equity and good conscience in determining matters of**

**maintenance**

66. Apart from the above discussion, in terms of Section 16 of the Madras Civil Courts Act, whenever a question regarding succession, inheritance and maintenance arises, the court, where no specific rule exists, will have to decide the issue according to justice, equity and good conscience. There is no dispute that the Dissolution of Muslim Marriage Act does not provide for a specific provision for grant of maintenance. If I were to hold that the Court does not have the power to grant maintenance, I feel that it will not be in accordance to the principles of justice, equity and good conscience.

67. Therefore, apart from the constitutional duty of this Court to present a level playing field to the litigants, which would lead to promotion of justice, even by reference to the colonial legislation of the Madras Civil Courts Act, I am of the view that the wife is entitled to file an application under Section 151 of the Code of Civil Procedure seeking interim maintainence. It might be relevant to cite the judgment of Justice E.S.Venkataramiah in ***Savitri v. Govind Singh Rawat, (1985) 4 SCC 337*** wherein his lordship held as follows:

> *" The Civil Courts have inherent power to grant interim maintenance pending disposal of the suit for maintenance. ... Every Court must be deemed to possess by necessary*

> *intendment. All such powers are necessary to make its orders effective. The principle is embodied with maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest*", where anything is conceded, there is conceded also anything without which the thing itself cannot exist. Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in expressed terms be also done, then that something else will be supplied by necessary intendment."

68. This principle necessarily has to be developed by Courts, since the legislature cannot contemplate a solution to all the problems that is presented in the Society. Within the broad framework that is laid down by the legislature, Courts will have to find a solution to the individual cases.

69. Here is a situation where the husband, who is earning well, is not willing to maintain his wife & child. The reason projected for the same is that the Act under which an application has been filed by the wife does not provide for an order of interim maintenance. I feel in such circumstances, keeping in mind the Constitutional rights granted to the women and children, it is the duty of the court to come up with a solution for them. I do not think constitutional courts have to wring their hands in helplessness pleading legislature has not

conferred the power on the civil courts specifically. It is to address these kind of situation that section 151 of the code of civil procedure exists.

69. Before bringing down the curtains on these judgments, I would go through the authorities referred to by the civil revision petitioner in the counter affidavit. The first of the judgment is ***State of U.P. and Ors. -vs- Roshan Singh and Ors., (2008) 2 SCC 488.*** The Supreme Court had been called upon to decide whether when an appeal is available under Section 13 of the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, Section 151 of the CPC can be availed especially after the period of limitation for an appeal under the Act has expired.

70. Under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960, when an order was passed determining surplus land under Section 12, an appeal is maintainable under Section 13 of the said Act. In the said case, the respondent had determined surplus lands in terms of Section 12 and no appeal was filed in time as required under Section 13. A belated attempt was made to reopen the concluded issues by resorting to Section 151 of the CPC. Dealing with the said issue, the Supreme Court held that if there are specific provisions of the CPC dealing with the particular topic and they expressly or necessary

implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the Court cannot be invoked in order to cut across the powers conferred by the CPC.

71. A reading of the aforesaid judgment makes it clear that where a specific provision is available and that provision has not been availed, Section 151 cannot be resorted to after the period of limitation has gone by. The aforesaid judgment is inapplicable to the following reasons:-

(i) There is no provision under the Dissolution of Muslim Marriages Act, 1939 providing for maintenance pending the litigation.

(ii) An issue of limitation will not arise in a matter of maintenance because when the wife is not maintained by the husband, a fresh cause of action arises month on month.

Hence this judgment noway helps the petitioner in the present case.

72. Insofar as the judgment of ***Naushad Flourish -vs- Akhila Noushad and another, 2023 SCC Online Ker 9059*** is concerned, it was not a case dealing with the power of the Court to grant maintenance under Section 151 of the CPC. The petitioner therein had approached the Family Court for

maintenance invoking Section 125 of the Criminal Procedure Code. Pending the proceedings before the Kerala High Court, the parties had entered into *khula.* The learned Judge interpreted *khula* to mean, refusal of the wife to live with the husband in terms of Section 125(4) of the Cr.P.C.. It is not a case of interim maintenance or a proceeding that had been initiated under the Dissolution of Muslim Marriages Act, 1939. Hence, the said judgment is also inapplicable.

**Decision**

73. As held by the Division Bench of this Court in ***Hajee Mahomed Abdul Rahman's*** case, when the relationship between the parties is admitted, the Court has the inherent power to grant interim maintenance. The learned Family Judge has only granted Rs.20,000/- per month to the wife as interim maintenance and Rs.10,000/- as litigation expenses.

74. The husband, on his own statement, is an eminent Pediatric Cardiologist who is acclaimed in his profession. He did not file the affidavit of assets and liabilities as directed by the Supreme Court disclosing as to what his income is. Therefore, applying the rule of thumb, the learned Trial Judge granted Rs.20,000/- for the wife and the child and Rs.10,000/- towards litigation expenses. I do not find it arbitrary or capricious.

75. Since as no other points were urged other than the jurisdiction of the Court and as I have held that the jurisdiction of the court exists, and since the impugned order does not suffer from arbitrariness or capriciousness, the only order that I have to pass is an order of dismissal. Accordingly, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order

To

The FAC Judge, Family Court, at Udhagamandalam

V.LAKSHMINARAYANAN, J.

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Pre-Delivery Order in

C.R.P.(PD).No.2660 of 2024

02.09.2024