

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 27.01.2009 Coram: THE HONOURABLE MR. JUSTICE G. RAJASURIAR. P. (PD) No. 3382 of 2008 and M.P. No. 1 of 2008 A. Venkatesan ... Petitioner vs. S. Kalpana ... Respondent This civil revision petition is preferred against the fair order and decree passed in I.A. No. 225 of 2008 in O.P. No. 2602 of 2005 dated 06.08.2008 by the learned I Addl. Family Court, Chennai, which petition was under Section 24 of the Hindu Marriage's Act 1955. For Petitioner : Mr. T. S. Rajmohan For Respondent : Mr. S. Pandima O R D E R Anivadverting upon the order dated 06.08.2008 passed by the learned I Addl. Family Court, Chennai, in I.A. No. 225 of 2008 in O.P. No. 2602 of 2005, this civil revision petition is focussed. 2. Heard both sides. 3. The facts giving rise to filing of this revision as stood exposted from the records as well as from the submission made by the learned counsel for the petitioner would run thus: The revision petitioner is the husband of the respondent. He filed the O.P. No. 2602 of 2005 seeking nullity of marriage. During the pendency of the same, the wife filed I.A. No. 225 of 2008 seeking interim maintenance and for costs. Whereupon, the Court after hearing both sides ordered the husband to pay interim maintenance of Rs. 1,500/- per month and also litigation expense of Rs. 4,000/- to the wife. Being aggrieved by and dissatisfied with the order of the lower Court, this revision is focussed on various grounds. 4. The learned counsel for the revision petitioner would develop his argument to the effect that this a peculiar case in which the wife is earning much more than the husband and before the lower Court, due opportunity was not given to adduce evidence to prove the financial status of the wife. Accordingly, he prays for setting aside the order of the lower Court. 5. A bare perusal of the lower Court's order would reveal that it gave a finding to the effect that the monthly income of the husband was Rs. 7,500/- to Rs. 8,000/- as he is working as Machine Operator in India Pistons and that his gross salary is Rs. 9,300/- p.m. and accordingly, awarded such interim maintenance and expenses in favour of the wife. 6. I would like to point out that there is no indication in the order that the plaintiff/husband took any steps to secure the salary particulars of the wife from her employer. It is the duty of the husband to prove that the wife is earning sufficiently and thereby she is not entitled to interim maintenance, if he wants himself to wriggle out of the payment of interim maintenance. The law is well settled that in such an application, elaborate enquiry is not contemplated. However, if the husband wants the Court to believe that the wife is having sufficient financial wherewithal to maintain herself, then it is for him to establish the same and simply by invoking the concept burden of proof, the husband cannot try to wriggle out his liability. Now the learned counsel for the petitioner would submit that had opportunity been given to the husband, he would have certainly placed relevant materials before the Court and convinced the Court. In this factual matrix, I would like to confirm the order of the lower Court dismissing this revision with liberty to the petitioner to gather salary particulars of the wife and file an application before the lower Court for recalling the order, if at all he could do so. In the peculiar circumstances, the wife has not chosen to appear before this Court so as to enable the Court to gather particulars from her regarding G. RAJASURIA, J., gmssalary. Hence in this singularly singular circumstances, the aforesaid liberty is given to the husband to get processed the matter before the lower Court, till the order in I.A. No. 225 of 2008 is recalled by the Family Court, it shall hold good and the husband shall honour it. 7. The learned counsel for the revision petitioner/husband would submit that a time frame may be fixed for the disposal of the O.P. 2602 of 2005 itself. I find considerable force in the submission made by the learned counsel for the revision petitioner. Accordingly, the lower Court is directed to dispose the O.P. No. 2602 of 2005 within a period of two months from the date of receipt of a copy of this order and report compliance. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. 27.01.2009 Index: Yes Internet: Yes gms To I Addl. Family Court, Chennai C.R.P. (PD) No. 3382 of 2008