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C.R.P (PD).No.1824 of 2022 and
C.M.P.No.9350 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.07.2022
Pronounced on	11.08.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P (PD).No.1824 of 2022 and
C.M.P.No.9350 of 2022

V.Anusha

... Petitioner

Vs.

B.Krishnan

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 11.04.2022 passed in I.A.No.1 of 2021 in O.P.No.4476 of 2019 pending on the file of the I Additional Family Court, Chennai.

For Petitioner : Ms.S.P.Arthi

For Respondent : Mr.D.Suresh Kumar



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ORDER

This Civil Revision Petition has been preferred to set aside the fair and decretal order dated 11.04.2022 passed in I.A.No.1 of 2021 in O.P.No.4476 of 2019 pending on the file of the I Additional Family Court, Chennai.

2. Heard Ms.S.P.Arthi, learned counsel for the petitioner and Mr.D.Suresh Kumar, learned counsel for the respondent and perused the materials available on record.

3. The short facts of the case are as follows:

The revision petitioner is the wife and the respondent is the husband. The petitioner wife has filed an Original Petition in H.M.O.P.No.4476 of 2019 for dissolution of marriage against the respondent husband. During the pendency of matrimonial proceedings, the wife filed a petition in I.A.No.1 of 2021 for granting the relief of mandatory injunction directing the respondent to move out of the matrimonial home in the best interest and welfare of the children till the disposal of the Original Petition in H.M.O.P.No.4476 of 2019. The learned I Additional Principal Judge, Family Court, Chennai, has partly



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WEB COPY allowed the petition by giving a direction that the respondent shall not disturb the peaceful possession and enjoyment of the petitioner in the matrimonial home in any manner whatsoever where the petitioner living along with her children, till the disposal of the main petition. Aggrieved over that, the revision petitioner has preferred this Civil Revision Petition.

4. Ms.S.P.Arthi, learned counsel for the petitioner submitted that the petitioner is an Advocate by profession and the respondent is doing business in construction; the matrimonial life between the petitioner and the respondent did not go well; the respondent started to harass the petitioner and insulted her unsuiting to her profession and self worth; the respondent also tortured the petitioner by manhandling her and abused her in filthy words; since the petitioner is being abused and treated in a violent manner in front of the children, the peace of mind of the children also affected; since the cruel attitude of the respondent went beyond the limits, the petitioner was forced to file a petition seeking mandatory injunction to remove the husband from the matrimonial home till the disposal of the Original Petition.

4.1. Despite the learned Family Judge has accepted that the attitude of



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the respondent is abusive and harsh, has not chosen to give a mandatory injunction to remove the husband from the matrimonial home, but granting an order directing the respondent not to disturb the petitioner; by taking advantage of the absence of any order of his removal, the respondent aggravated his abusive attitude and for which the petitioner and her children were not able to put up with; since the children are young and at an impressionable age, it is not ideal to put them under constant fear; the fact that the respondent got alternate accommodation of his own has been brought to the knowledge of the learned Family Judge but that was not considered.

5. Mr.D.Suresh Kumar, learned counsel for the respondent submitted that despite getting a favourable order from the learned Family Judge of the Family Court, the petitioner has chosen to file this Revision Petition just to harass the respondent by adamantly seeking an order for removing him from the matrimonial home; the order of the learned Family Judge is supportive to the petitioner and there is no prejudice caused to the petitioner; even though the respondent husband provides all good to the children and extend his support, the petitioner is harassing the respondent and the children; so, the



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WEB ORDER passed by the learned Family Judge does not require any revision.

6. The petitioner is said to be a practising Advocate. Since the marriage between the petitioner and the respondent did not go well, the family became a battlefield. While the petitioner states that the respondent is unruly and harsh, the respondent claims that he is a very supportive father and the petitioner being an advocate has dragged him to court. Though it is not appropriate to deal with the merits of the allegations made by the respective parties, some basic idea about the conduct of the parties is essential to decide the prayer sought in the petition.

7. The anguish of the petitioner is despite the respondent married her knowing her demanding profession, he is not able to reconcile with her professional demands. Instead of giving a supportive hand to the petitioner by being accommodative, the respondent has developed a complaining attitude and found fault with the respondent for being engaged with her work.

8. Even in the counter filed in this Civil Revision Petition, the



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respondent has stated that the petitioner did not prefer to stay at home, but often went outside. According to the understanding of the respondent, an ideal mother is a woman who always stays at home and does only the household chores. If a woman chooses to be independent and do something more than being a housewife and if it is not taken well by her husband, that makes her life horrible by having its repercussion over her personal, familial and professional spheres. As couples if the parties do not tolerate each other's career demand and balance both family and career and mingle with each other's society without any inhibition, constant conflict in an inevitable result. Due to lack of understanding and respect for the professional commitments of the petitioner, the respondent developed a hostile attitude towards her. His intolerance seems to be creating squabbles and troubles in the life of the parties.

9. An order of a single judge of this court dated 14.06.2022 in connection with these parties, is placed before this court. The said order would show that the respondent has even attributed bias against the learned Judge by alleging that he was amenable to the influence of the petitioner.

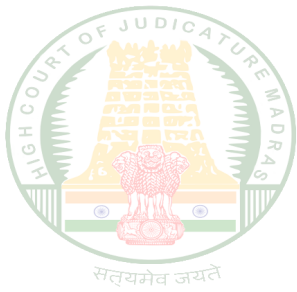


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WEB COPY This has invited the Court's *suo motu* criminal contempt proceedings against him. It is only an illustration of his doubtful mind and unreasonable attitude.

10. The couple of this case have got two children aged about 10 years and 6 years. The respondent's abusive attitudes will only disturb the children. It is not unusual for couple live under a same roof despite their marriage lost its charm. They may even turn east and west but still try to manage to live in the same house. So long as their conduct does not hurt the family peace, but only their personal relationship, there is no harm in allowing the parties to live in a same house until a logical end is given to their marriage.

11. But it is a completely different scenario if one party unfurls unruly and aggressive attitude. In such an unreasonably adverse situation, the petitioner and her children can not be compelled to live under constant fear and insecurity. In similar such circumstances, the courts have granted direction to remove the husband from the matrimonial home. In this context, it is worthwhile to refer the judgment of the Hon'ble Supreme Court rendered in the case of *Samir Vidyasagar Bhardwaj Vs. Nandita Samir Bhardwaj*



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WEB COPY *reported in (2017) 14 SCC 583.* In the said case, it is held in paragraph No.10

as under:

“10. Section 19(1)(b) of the Protection of Women from Domestic Violence Act provides that the Court may direct the appellant husband to remove himself from the shared household. The order passed under Section 19 of the Act seeks to maintain continued and undisturbed residence of the aggrieved party within the shared household and in pursuance of the same it directs the respondent to execute a bond with or without surety or secure an alternate accommodation for the aggrieved party and pay the rent for the same and restrains the respondent from or renouncing property rights or valuable security of the aggrieved party.”

12. If the removal of the husband from home alone is the only way to ensure domestic peace, the courts need to pass such orders irrespective of the fact whether the respondent has or has not an other accommodation of his own. If the husband has got an alternate accommodation, it is fine that he can be asked to accommodate himself in that alternate premises. If he does not have any other accommodation, it is upto him to secure an alternate accommodation. In this case, the petitioner has filed a memo stating the



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WEB COPY details about the possibility of accommodating the respondent in the alternate accommodation possessed by him. But the same was not considered by the court below.

13. However, the learned District Judge has arrived at a conclusion that the wife should be given with the protection order. In that case, the order given by the learned trial Judge should be a workable and practical one. Allowing the respondent to be at the same home, but directing him that he should not disturb the other inmates of the home is something impractical. A relief for a person who fears about an impending atom bomb, would be just to remove the bomb from his/her vicinity. The learned District Judge has made an observation that there is no cohabitation between the couple for five years. That means the marriage is nothing short of an utter failure. In such context of the facts, it will be very difficult to maintain peace in the family, if the respondent's unruly and violent attitude is not contained by any workable order.

14. The protection orders are normally given to ensure the peaceful



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WEB COPY movement of a woman within her domestic sphere. When a woman fears the presence of her husband and screams, the Courts cannot be indifferent by just directing the husband that he should not harass the wife, but by allowing him to reside in the same house.

15. When a couple lives under one roof, the conduct of one party to the other is always vital in defining the respect and recognition the family would get from others. If the domestic peace is disturbed due to unruly act of one party, namely the husband, there need not be any hesitation in giving the practical enforcement for the protection order by removing the husband from the house. In such circumstances I feel the order of the court below needs modification.

16. In the result, this Civil Revision Petition is allowed and the order of the I Additional Family Court, Chennai made in I.A.No.1 of 2021 in O.P.No.4476 of 2019 dated 11.04.2022 is modified and the respondent is directed to leave the house where the petitioner and the children live and find an alternate accommodation within a period of two weeks from the date of



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WEB COPY receipt of a copy of this order, failing which, the respondent shall be removed from the matrimonial home with the help of police protection. The petitioner is at liberty to file a petition before the family court for getting appropriate orders like police protection, in case, the respondent fails to leave the matrimonial home by himself. In the event of such petition is filed, the learned Judge of the I Additional Family Court, Chennai, shall consider and pass necessary orders in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Speaking / Non Speaking Order
gsk

11.08.2022

To
I Additional Family Court, Chennai.

R.N.MANJULA, J.

gsk



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