

(1963) 09 MAD CK 0001

In the Madras High Court

Case No : Civil Revision Petition No. 1092 of 1963

K. Jaganmohan Rao

APPELLANT

Vs

K. Swarupa

RESPONDENT

Date of Decision : 20-09-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1964) ILR (Mad) 714

Hon'ble Judges : S. Ramachandra Ayyar, C.J

Bench : Single Bench

Advocate : Syed Ahmed, for the Appellant; K.G. Manickarasayam, for the Respondent

Judgement

S. Ramachandra Ayyar, C.J.—This revision petition is directed against an order of the Additional City Civil Judge, Madras, directing

conditional striking out of the defence to a suit. The suit is one for restitution of conjugal rights filed by the Respondent against her husband, the

Petitioner. Pending the suit interim maintenance was directed to be paid by the husband to the wife. There has been considerable default in the

payment of interim maintenance; but the order fixing the maintenance did not impose any penalty for default. When the arrears had accumulated to

a substantial amount, the wife not merely applied for execution for the amount due, but also applied u/s 151, Code of Civil Procedure, to strike out

her husband's defence to the action. The learned Judge was evidently impressed with the plea taken en behalf of the husband that he could not find

money immediately to pay up all that was due. Some amount was got ready by the time the matter came up before the learned Judge and it was

paid. He then passed the following order:

If the amount due up to this date for interim maintenance is not paid within a month from this date the defence will stand struck off.

The Petitioner did not pay the money within the time provided but, instead, he has filed this revision.

2. It is contended on behalf of the Petitioner that the Court has no jurisdiction to strike off the defence, even if there be a contumacious conduct on

the part of the husband. I cannot, however, agree with this. At the same time, I am of opinion that the order of the learned Judge is not in

accordance with sound rules of procedure. Striking out a defence is a serious matter, and it has to be done after taking every circumstance into

consideration. There can be no anticipatory or conditional order for striking out a defence for the simple reason that the Court has got to consider

the materials as they exist on the date when the order for striking out is passed. In the present case, what the learned Judge had done is to strike

out the defence a month after the date of the order if a particular thing was not done. An order of that kind would preclude even the Court from

taking into account the relevant circumstances on the date when the order is to become operative whether the default should be condoned or not. It

is extremely undesirable that Courts should so bind themselves. While, therefore, holding that it will be competent for the Court in a matrimonial

action to strike out the defence if there be proved contumacy on the part of the party, I must also say that an order striking out the defence must be

a present and not a prospective order to come into existence on an uncertain event happening or not happening. Such conditional orders are no

doubt passed in discretionary matters; but they are inappropriate to orders contemplating a striking out of a defence to an action. I am, therefore,

unable to sustain the order of the lower Court. It will be accordingly set aside and the matter remanded to the lower Court for disposal in

accordance with law.

3. The Petitioner will pay the costs of the Respondent.