

Praveen Kumar Vs. Sudha

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Court : Kerala

Decided On : Nov-29-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Praveen Kumar

Respondent : Sudha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN FRIDAY, THE 29TH DAY OF NOVEMBER 2013 8TH AGRAHAYANA, 1935 Mat.Appeal.No. 423 of 2013 () APPELLANT/ RESPONDENT /PETITIONER:- ----- PRAVEEN KUMAR, S/O.SUNDARDAS, SAPALYA PALLA HOUSE, KUNJATHUR P. O, KASARAGOD. BY ADV. SRI.T.G.RAJENDRAN RESPONDENT / PETITIONER / RESPONDENT: ----- SUDHA, AGED 28 YEARS, W/O.PRAVEEN KUMAR, NEAR M M B SUPER BAZAR, KALKATTA, MANJANADY VILLAGE, MANGALORE TLAUK, KARNATAKA STATE.560 001. R1 BY ADV. SMT.USHA RAVINDRAN THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 29/11-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- KKS Mat Appl No.423 of 2013 ----- APPENDIX PETITIONER'S ANNEXURES:- ----- ANNEXURE-1 : TRUE COPY OF THE JUDGEMENT IN OP5011 DATED 16/9.2011 ON THE FILE OF THE FAMILY

COURT,KASARAGODE. ANNEXURE-II : COPY OF THE PETITION IN I.A. 256/12 FILED BY THE RESPONDENT. ANNEXURE-III : TRUE COPY OF THE PETITION IN IA25712 FILED BY THE RESPONDENT. ANNEXURE-IV : TRUE COPY OF THE COUNTER IN IA25612 FILED BY THE PETITIONER. ANNEXURE-V : TRUE COPY OF THE

JUDGMENT

IN IA25612 IN OP502011 OF FAMILY COURT, KASARAGODE. //TRUE COPY//
P.S.TO. JUDGE. KKS ANTONY DOMINIC & P.D.RAJAN, JJ
..... Mat Appeal No.423 of 2013
Dated 29th November, 2013

JUDGMENT

ANTONY DOMINIC, J This appeal is filed by the appellant against the order in I.A.No.256 of 2012 in O.P.No.50 of 2011 on the file of Family Court, Kasargode, seeking divorce against the respondent on the ground of cruelty and insanity. It is stated that on 13.7.2011, the respondent did not enter appearance and on account of her absence, she was set exparte. She thereafter filed I.A.No.672 of 2011 before the Family Court to set aside the order. That was allowed subject to payment of cost. However, cost was not paid within time and as a result, on 16.11.2011, the OP was decreed by Ext.A1 exparte judgment.

2. Subsequently, respondent filed I.A.No.256 of 2012 to condone the delay of 303 days in paying the cost and I.A.No.257 of 2012 to set aside Ext.A1 judgment. Appellant filed Ext.A4 objection. Family Court thereafter passed Ext.A5 order dated 11.4.2013 allowing I.A.No.256 Ma 423/2013 2 of 2012 and condoning the delay. It is challenging this order, this appeal is filed and in reference to the order of stay passed by this court on 1.7.2013, according to the learned counsel for the respondent, no orders have so far been passed on I.A.No.257 of 2012.

3. We heard the learned counsel for appellant and the respondent.

4. From the above, it is evident that what is impugned in this appeal is the order passed by Family Court allowing I.A.No.256 of 2012 in O.P.No.50 of 2011, whereby Family Court has condoned the delay in paying the cost as ordered by it

in I.A.No.672 of 2011. Reading of the order shows that the respondent had given sufficient reasons justifying the delay and the facts pleaded by her also does not indicate either that she is guilty of laches or lack of bonafides. It was in such circumstances that Family Court condoned the delay as sought for by the respondent so that if I.A.No.257 of 2012 is also allowed, parties will have an opportunity to contest the matter on merits. We do not think that the Ma 423/2013 order passed by Family Court, Kasargode, allowing I.A.No.256 of 2012 suffers from any illegality justifying its interference in an appeal before this court. Appeal is accordingly dismissed. ANTONY DOMINIC, JUDGE P.D.RAJAN, JUDGE Igk

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