

Abid Vs. Ramla and Another

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Court : Kerala

Decided On : Mar-14-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Abid

Respondent : Ramla and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID FRIDAY, THE 14^H DAY OF MARCH 2014 23RD PHALGUNA, 1935 RPF.No. 226 of 2010 ----- AGAINST THE

ORDER

IN MC1792009 of FAMILY COURT, KASARAGOD DATED 28-04-2010 REVISION PETITIONER/RESPONDENT: ----- ABID, AGED 28 YEARS, S/O.ABDUL RAZZAK, RESI: NEAR KUKKAJE MOSQUE, UDAYA NAGAR, KUNJATHUR POST, MAJESWAR, KASARGOD TALUK & DISTRICT, REP. BY HIS POWER OF ATTORNEY HOLDER MOIDEEN BAVA, S/O.KHADER RESIDING AT M.C.SHAHANAS MANZIL, POSOAT, LAKSHAM VEEDU COLONY, MANJESWAR POST, KASARAGOD TALUK & DISTRICT. BY ADV. SRI.T.MADHU RESPONDENTS/PETITIONERS: ----- 1. RAMLA, W/O.ABID, AGED 23 YEARS, RESIDING AT IRANYA HOUSE, CHIPPAR POST, UPPALA VIA, KASARAGOD TALUK & DISTRICT.

2. SHARAHIL HADIYA, AGED 2 YEARS, MINOR REPRESENTED BY HER MOTHER AND GUARDIAN THE 1ST PETITIONER HEREIN, RAMLA, W/O. ABID AGED 23 YEARS, RESIDING AT IRANYA HOUSE, CHIPPAR POST UPPALA VIA, KASARAGOD TALUK & DISTRICT. R1 BY ADV. SRI. KODOTH SREEDHARAN THIS REV. PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 14/03/2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
ab P.UBAID, J.

----- R.P(FC) No.226 of 2010
----- Dated this the 14th day of March, 2014

ORDER

The revision petitioner herein challenges the maintenance order against him under Section 125 of the Code of Criminal Procedure, passed by the Family Court, Kasaragod on 28.4.2010 in M.C.No.179/2009. The petitioners in the trial court are his wife and minor son. At the time of filing of the petition, the son was aged only one year. The petitioners in the trial court are the respondents herein. The first respondent was married by the revision petitioner on 11.1.2007, but the matrimony did not last long. Alleging cruelty and desertion the first respondent brought claim for maintenance before the trial court, and it was contested by the revision petitioner herein through a power of attorney holder. The revision petitioner is admittedly employed abroad, and he could not make an effective offer. With the confidence that he could succeed by employing an agent, he entrusted somebody under a power of attorney to contest the matter. The case of the 1st respondent herein is that she was R.P(FC) No.226 of 2010 2 driven out from the matrimonial home by her husband, and her husband has neglected to maintain her and her child since their separation.

2. The respondent filed counter statement through his power of attorney holder denying the allegations of cruelty and desertion. His case is that his wife does not have any sufficient reason to live separately and claim maintenance. Though an evasive offer is made by him, the said offer was not considered by the trial court, being an offer made through his power of attorney holder. The trial court conducted an enquiry in the proceedings. The 1st respondent herein was

examined as PW1, but nobody turned up from the side of the revision petitioner to adduce any evidence. Accepting the evidence of the 1st respondent herein the trial court found that she is entitled to get maintenance. Accordingly, the trial court passed orders, granting maintenance at the rate of 2,500/- per month to the 1st respondent and at the rate of 500/- per month to the child. The said order is under challenge in this revision.

3. Learned counsel for the revision petitioner submitted that the 1st respondent herein is not entitled under law to claim maintenance because she has failed to prove any satisfactory reason to live separately and claim maintenance. R.P(FC) No.226 of 2010 3 This is a claim made under Section 125 of the Code of Criminal Procedure. This is not a claim for maintenance in civil action. In a proceeding under Section 125 of Cr.P.C it is enough that the petitioner substantiates a case of desertion or neglect. However, in this case the 1st respondent has given evidence substantiating her allegations of cruelty. The respondent, though received notice, found it not convenient to appear in Court directly or contest the matter. He simply engaged a power of attorney holder to contest the matter. Of course, an offer made by the power of attorney cannot all be accepted by the Court. The offer to take back the petitioner and maintain her must come from the husband, and it must come from his mouth. Any way, the 1st respondent has given satisfactory evidence proving her case. This Court finds that she has proved a case of desertion and neglect meant under Section 125 of the Code of Criminal Procedure.

4. Now coming to the question of quantum, this Court finds that the amount of maintenance granted to the child is, in fact, not adequate. However, the matter is left to be decided in appropriate proceedings if and when enhancement is sought under Section 127 of the Code of Criminal Procedure. As regards the amount granted to the 1st respondent, I find that the R.P(FC) No.226 of 2010 4 amount is quite reasonable, and it does not require any interference by this Court. The Court will have to consider the present day social realities including the cost of living, and also reasonable needs and necessities of a lady aged about 25 years. When all these aspects are considered, it can very well be found that the amount of 2,500/- awarded by the trial court is quite reasonable. Admittedly, the revision

petitioner is employed abroad, and there is nothing to show that he has lost his job and has come back and settled here. Such a person cannot be heard to contend that he cannot not pay maintenance of 2,500/- per month. The quantum does not require interference in revision. I do not find any illegality, irregularity or impropriety in the maintenance order passed by the trial court. This R.P(FC) is liable to be dismissed as meritless. In the result, this R.P(FC) is dismissed. P.UBAID JUDGE
ab

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