

Xavier Vs. Siji

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Court : Kerala

Decided On : Aug-18-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Xavier

Respondent : Siji

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID MONDAY, THE 18TH DAY OF AUGUST 2014 27TH SRAVANA, 1936 RPFC.No. 220 of 2014 () -----
AGAINST THE

ORDER

IN MC5922011 of FAMILY COURT, THRISSUR REVISION PETITIONER(S)/REVISION PETITIONER/RESPONDENT:

----- XAVIER AGED 36 YEARS
S/O. OUSEPH, KUTTIKATTIL HOUSE, ATTATHARA DESOM KOTTAPPURAM
VILLAGE, THALAPPILLY TALUK THRISSUR DISTRICT 680590 BY
ADVS. SRI. SANTHARAM.P SMT. REKHA ARAVIND
RESPONDENT(S)/RESPONDENTS/PETITIONERS:

----- 1. SIJI, AGED 27 YEARS D/O. OUSEPH,
CHITTILAPPILLY HOUSE, PUTHURUTHY P.O & VILLAGE, THALAPPILLY
TALUK THRISSUR DISTRICT 680623 2. MINOR ALEENA (MINORS

RESPRESENTED BY MOTHER1T RESPONDENT AS GUARDIAN R1,R2 BY ADV. SRI.K.R.AVINASH (KUNNATH) R1,R2 BY ADV. SRI.ABDUL RAOOF PALLIPATH THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON1808-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: P.UBAID, J.

~~~~~ R.P (FC) No.220 of 2014 ~~~~~ Dated this the 18th August, 2014

## ORDER

The revision petitioner is aggrieved by the maintenance order obtained by his wife and minor daughter from the Family Court, Thrissur in a proceeding under Section 125 of Cr.P.C. He married the 1st respondent on 18.5.2003, but in 2007, she was compelled to file an application for maintenance as M.C. 191 of 2007. Pending the said proceedings, the parties settled the dispute and reunited. However, she had to leave the matrimonial home again on 14.9.2010, when she found the cruel habits of the husband unbearable even after reunion. Later in 2011, she brought M.C. 592 of 2011 for maintenance for her and the minor daughter 2. The revision petitioner entered appearance in the trial court and resisted the claim mainly on the contention that his wife has her own source of income, and that she has no reason to live separately. R.P (FC) No.220 of 2014 2 3. The trial court conducted enquiry in the proceedings and recorded evidence. The wife examined herself as PW1 and the husband examined himself as RW1. He also produced Exts.B1 to B3 documents. On an appreciation of the evidence, the trial court found that the wife has her own reason to live separately, and that she has no source of income of her own. Finding that the husband is a mason by profession having sufficient income, the trial court directed him to pay maintenance to the wife at the rate of 2000/- per month, and to the minor daughter at the rate of 1500/- per month. The said order dated 4.11.2011 in M.C. 592/2011 is under challenge in this revision.

4. On hearing both sides on admission, I find that the real grievance of the revision petitioner is only regarding the quantum of maintenance awarded by the trial court. I find that refusal of the 1st respondent to live with the husband is justifiable in the given circumstances. She has substantiated her allegations of cruelty and

desertion. It has come out in evidence that she had to leave the matrimonial home due to her husband's cruelty, but on the R.P (FC) No.220 of 2014 3 intervention of mediators, they reunited pending the first proceedings brought under Section 125 of Cr.P.C. But the wife had to leave the matrimonial home on 14.9.2010 when her husband continued his cruel habits. The wife has her own grievance as a deserted and neglected wife, and she is definite that the husband has not paid anything to her so far, since the separation in 2010. Thus, I find a neglected and deserted wife here, and I find that her refusal to live with her husband is justifiable. Accordingly, she is found entitled to claim maintenance under Section 125 of Cr.P.C.

5. The revision petitioner has well admitted in evidence that he is a mason by profession. We know the present day wage structure where a mason will earn not less than 750/- per day. The revision petitioner's case is that his wife has her own source of income to maintain herself. But such a case stands not proved by any evidence. His further contention is that he has some other liabilities. On the basis of Exts.B1 to B3 documents, he would contend that he will have to meet the treatment expenses of his R.P (FC) No.220 of 2014 4 parents. He is not the only child of the parents. If at all, he has other liabilities, that will not absolve him from his liability towards his wife and minor daughter. As a person earning sufficiently everyday, he is bound to maintain his wife and minor daughter properly. From what he gets everyday, he will have to provide adequately to his wife and daughter. We know the present day needs and necessities and also the cost of living which is always on the increase. On a consideration of all the relevant aspects, I find that 2000/- per month granted to the wife and 1500/- per month granted to the child by the trial court is not excessive or unreasonable. In the present circumstances, they will require that much for their maintenance. I find no reason for interference in the quantum of maintenance awarded by the trial court. In the result, this revision petition is dismissed in limine, without being admitted to files. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge