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P. Ramsheed Vs. SajnA. V

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Court : Kerala

Decided On : Aug-19-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : P. Ramsheed

Respondent : SajnA. V

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE19H DAY OF AUGUST201428TH SRAVANA, 1936 RPFC.No. 285 of 2014 () ---------- AGAINST THE

JUDGMENT
IN MC2502012 of FAMILY COURT, KANNUR RVISION PETITIONER/RESPONDENT: ---------- P. RAMSHEED S/O. ABDURAHIMAN, 32 YEARS, AYISSU MANZIL, P.O. EDAKKAD KANNUR TALUK, KANNUR DIST. BY ADV. SMT.K.DEEPA (PAYYANUR) RESPONDENT(S)/PETITIONERS: ---------- 1. SAJNA. V, AGED25YEARS D/O. K.P. NASEER, SAFA MAHAL, POTHUVACHERY.

2. SHAZA,, AGED3YEARS MINOR, REPRESENTED BY HER MOTHER1T PETITIONER SAJNA. R1 BY ADV. SRI.P.U.SHAILAJAN THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION

ON1908-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: P.UBAID, J.

~~~~~~~~~~ R.P (FC) No.285 of 2014 ~~~~~~~~~~~ Dated this the 19th August, 2014

ORDER

The respondents herein are the divorced wife and the minor daughter of the revision petitioner. In a claim brought by the wife as M.C No.250 of 2012 under Section 125 of Cr.P.C, the Family Court, Kannur directed the revision petitioner to pay maintenance to the wife at the rate of 2000/- per month, and to the child at the rate of 1500/- per month. The said order dated 3.3.2014 is under challenge in this revision.

2. The 1st respondent is admittedly the divorced wife of the revision petitioner. The revision petitioner contends that she cannot claim maintenance under Section 125 of Cr.P.C because she is a divorced lady and she will have to find her remedies under the Muslim Women (Protection of Rights on Divorce) Act, 1986. When the 1st respondent is admittedly a divorced lady, much probe or enquiry is not required regarding her right to claim R.P (FC) No.285 of 2014 2 maintenance. The only question is whether her right under Section 125 of Cr.P.C can be denied on the ground that the marriage stands dissolved. It is well settled that even a divorced lady is entitled to claim maintenance under Section 125 of Cr.P.C. Of course in the case of a muslim woman, who is divorced, she can opt to claim maintenance under Section 125 of Cr.P.C or under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act. It is well settled that till she makes a claim under the Special Law, she will have to be paid maintenance by the former husband under Section 125 of Cr.P.C. Thus, regarding the right of the 1st respondent to claim maintenance under Section 125 of Cr.P.C, there cannot be any dispute.

3. Now the question is whether the quantum of maintenance awarded by the trial court requires interference in revision. We must be aware of the present day social circumstances and the cost of living, which is always on the increase. Nobody will
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say that 2000/- per month ordered to the wife or 1500/- per month ordered to the child is excessive or unreasonable. As on the date of claim, the minor child was aged 3 years. No doubt, the child will require good amount for her maintenance and R.P (FC) No.285 of 2014 3 education. Interference is not at all required in the quantum of maintenance awarded to the child. In the case of wife also, I do not feel the necessity of interference because she requires 2000/- per month in the present social circumstances. Of course, she has remedies under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, and she can bring claim under the Special Law for provision, maintenance and other remedies. Till she brings such a claim, she will have to be paid under Section 125 of Cr.P.C. However, whatever amount received by her under Section 125 of Cr.P.C after divorce, will have to be adjusted towards the amount due and payable under the Special Law. Otherwise, she will have double benefits. This is not the object of law. The moment she is divorced, she becomes entitled for reliefs under the Special Law. The Special Law meant for her protection, provides remedy to her as a divorced woman, but she cannot claim under both the laws. She can claim either under the Special Law or under Section 125 of Cr.P.C. This is the spirit of what is provided under the Special Law. This means that whatever the amount she received under Section 125 of Cr.P.C, after divorce, will have to be adjusted towards the amount payable under the R.P (FC) No.285 of 2014 4 Special Law, by way of maintenance or provision. Subject to this observation, the maintenance order in her favour can be confirmed. In the present social circumstances, the amount does not require any interference in revision. In the result, this revision petition is dismissed in limine, without being admitted to files. However, it is made clear that whatever amount received by the 1st respondent under Section 125 of Cr.P.C, after divorce, will have to be adjusted towards the amount due and payable under Section 3 (1) (a) of the Muslim Women (Protection of Rights on Divorce) Act, when she makes such a claim in Court. The revision petitioner will have to make payment under Section 125 of Cr.P.C as ordered by the trial court till payment is made under Section 3 (1) (a) of the Muslim Women (Protection of Rights on Divorce) Act. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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