

Ajithkumar K. Vs. Sajina Panayan

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Court : Kerala

Decided On : Oct-27-2014

Judge : Honourable Mr. Justice a.Muhammed Mustaque

Appellant : Ajithkumar K.

Respondent : Sajina Panayan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 27TH DAY OF
OCTOBER 2014 5TH KARTHIKA, 1936 RPFC.No. 388 of 2014 ()
----- AGAINST THE

ORDER

IN MC2662012 of FAMILY COURT, KANNUR REVISION
PETITIONER(S)/RESPONDENT: ----- AJITHKUMAR K,
AGED 35 YEARS, S/O. K.PURUSHOTHAMAN, RESIDING AT AKHIL NOVAS,
MACHIKKAD, EDACHAKKI POST, UDINUR VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT. BY ADV. SRI.A.ARUNKUMAR
RESPONDENTS/PETITIONER: ----- 1. SAJINA PANAYAN,
AGED 27 YEARS, D/O.PREMAN E., RESIDING AT ILLIPURA, PAPPINISSERI
WEST P.O., KANNUR DISTRICT - 670 561.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM - 682 0487. R1 BY ADV. SRI.B.KRISHNAN R1 BY ADV. SRI.R.PARTHASARATHY R2 BY PUBLIC PROSECUTOR SRI.N. SURESH THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 27.10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... R.P(FC).No.388 of 2014
..... Dated this the 27th day of October, 2014.

ORDER

The counter petitioner in M.C.No.266/2012 on the file of the Family Court, Kannur is the revision petitioner herein.

2. An application for maintenance was filed by the first respondent herein under Section 125 of the Code of Criminal Procedure. It was alleged in the petition that the petitioner herein married the 1st respondent on 15.3.2009 and they lived as husband and wife for two years and thereafter they started residing separately and no maintenance was provided. The petitioner in the lower court is not having any employment or income to maintain herself. She is depending on her parents. She requires an amount of Rs.5,000/- per month as maintenance. The revision petitioner herein is the respondent in the lower court is working as a concrete worker and getting an amount of Rs.20,000/- per month and capable of maintaining the respondents herein. So she filed an application for maintenance.

3. Though the respondent in the lower court appeared and R.P(FC).No.388 of 2014 2 filed counter denying the allegations, when the case was posted for evidence, he remained absent. So he was declared ex parte and relying on the evidence of the respondent herein, who was examined as PW1, the court below fixed the maintenance amount at Rs.3,000/- and directed the respondent, who is the revision petitioner herein, to pay the same from the date of the petition ie., from 8.8.2012. Aggrieved by the same, the present revision has been filed.

4. Heard both sides.

5. The counsel for the revision petitioner submitted that the 1st respondent is a divorced wife now. Earlier an application for restitution of conjugal rights was filed by the petitioner before the Family Court, Kasaragod and the first respondent herein filed an original petition for divorce before the Family Court, Kannur and the proceedings of the Family Court, Kasaragod was stayed by this Court in a proceedings initiated by the first respondent herein and divorce was granted ex parte and that was not challenged by the revision petitioner. So, the liability to pay maintenance does not arise.

6. The counsel for the first respondent submitted that the petitioner is working as a concrete labourer and getting R.P(FC).No.388 of 2014 3 Rs.20,000/- per month and the amount awarded as maintenance is reasonable and no interference is called for.

7. It is an admitted fact that the revision petitioner married the first respondent herein and they lived together for some time. Thereafter they started living separately from 5.1.2010 onwards. Thereafter no maintenance paid. It is also in a way admitted that the revision petitioner filed an application for restitution of conjugal rights before the Family Court, Kasaragod and that was stayed by this Court on the basis of a petition filed by the first respondent herein. It is also in a way admitted that the first respondent herein filed an application for divorce and that was decided ex parte and the marriage had dissolved and that was not challenged by the revision petitioner and he has no intention to challenge the same as well. These things happened during the pendency of the proceedings before the Family Court for maintenance. However, since it was decided ex parte and certain things will have to be considered by the court below after hearing both sides, this Court feels that an opportunity has to be given to the revision petitioner to contest the case on merit. But at the same time, the purpose of the provision has to be taken note of by this Court as well, as it is R.P(FC).No.388 of 2014 4 intended to avoid vagrancy to a destitute woman and provide maintenance for her subsistence. So under the circumstances, this Court feels that though an opportunity has to be given to have the case decided on merit by setting aside the order passed by the court below, a provision must be made for paying interim maintenance during the pendency of the proceedings. So, this Court feels that the

revision petitioner can be directed to pay interim maintenance at the rate of Rs.2000/- per month during the pendency of the proceedings in the lower court from the date of petition namely 8.8.2012 and some time can be given to the revision petitioner to pay arrears and continue to pay the amount during the pendency of the proceedings before the family court and also the family court can be directed to expedite the disposal of the case as well. So the revision petition is allowed and the ex parte order of maintenance passed in M.C.No.266/2012 on the file of the Family Court, Kannur is set aside and the matter is remanded to court below for fresh disposal in accordance with law. The revision petitioner is directed to pay interim maintenance at the rate of Rs.2,000/- per annum from 8.8.2012 to the respondent herein and pay the arrears in three equal monthly instalments and continue to R.P(FC).No.388 of 2014 5 pay the amount during the pendency of the proceedings every month without fail. If the petitioner commits any default in payment of the amount, the court below is at liberty to initiate proceedings for realisation of the amount for executing the interim order on an application filed by the 1st respondent herein for that purpose. The parties are directed to appear before the court below on 25.11.2014. Considering the fact that the case is of the year 2012, the lower court is directed to expedite the disposal of the case as early as possible, at any rate, within three months from the date of receipt of a copy of this order or the date on which the case is posted for appearance of the parties, whichever is earlier. The amount, if any, paid by the revision petitioner during the execution proceedings, can be given credit towards the arrears amount to be payable on the interim maintenance fixed by this Court. Communicate this order to the court below at the earliest. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge R.P(FC).No.388 of 2014 6

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