

Biju vs Sajitha

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : RPFC/136/2016

Appellant : BIJU

Respondent : Sajitha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945 RPFC NO. 136 OF 2016 AGAINST THE ORDER DATED 17.10.2015 IN MC 93/2014 OF FAMILY COURT, IRINJALAKUDA REVISION PETITIONER/RESPONDENT: BIJU AGED 28 YEARS S/O. THARAYIL SREEDHARAN, PUTHENCHIRA VILLAGE, VELLOOR DESOM, MUKUNDAPURAM TALUK, THRISSUR DISTRICT. BY ADV SRI.MANSOOR.B.H. RESPONDENT/PETITIONER: SAJITHA AGED 31 YEARS D/O. CHEMBANKOCHI RAGHAVAN, THANİYATHUMKUNNU DESOM, THEKKUMKARA VILLAGE, MUKUNDAPURAM TALUK, THRISSUR-680589. BY ADVS. SRI.K.S.RAJESH SRI.M.SHAJU

PURUSHOTHAMAN THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C. S. DIAS, J.

----- Dated this
the 30th day of November, 2023

ORDER

The revision petition is filed questioning the legality and correctness of the order in M.C. No.93/2014 of the Family Court, Irinjalakuda, ordering the revision petitioner to pay the respondent monthly maintenance allowance @ Rs.3,500/- from the date of petition (May, 2014). The revision petitioner was the respondent and the respondent was the petitioner before the Family Court. The facts in brief:

2. The respondent had filed the application under Section 125 of the Code of Criminal Procedure (in short, Code), seeking

monthly maintenance allowance from the revision petitioner. It was her case that she was married to the revision petitioner on 11.04.2010. They are issueless. The revision petitioner treated the respondent with matrimonial cruelty. Subsequently, he drew her away from the matrimonial home. He has not enquired about her welfare. She is suffering from various ailments. She requires an average amount of Rs.6,000/- per month for her sustenance. The revision petitioner is earning a monthly income of Rs.20,000/- . Hence, the application.

3. The revision petitioner had filed a

written objection refuting the allegations in the application. It was his defence that the respondent left the matrimonial home without sufficient reason. He was not

earning any amount as alleged in the application. The respondent does not require Rs.6,000/- for her maintenance. In fact, she is earning Rs.10,000/- from her avocation. Hence, the application may be dismissed.

4. The first respondent was examined as PW1 and Exts.A1 and A2 were marked through her in evidence. The revision petitioner was examined as RW1.

5. The Family Court, after analysing the

pleadings and materials placed on record, by the impugned order, partly allowed the claim petition by directing the revision petitioner to pay the respondent Rs.3,500/- per month from May, 2014 onwards.

6. It is assailing the said order; the revision petition is filed.

7. Heard; Sri.Mansoor B.H., the learned counsel appearing for the revision petitioner and Sri.K.S.Rajesh, the learned counsel appearing for the respondent.

8. Is there any illegality, impropriety or irregularity in the impugned order?

9. The revision petitioner admits his marriage with the respondent.

10. The respondents case in the

application was that she was driven away from the matrimonial home by the revision petitioner. She does not have the means to sustain herself. The revision petitioner is earning Rs.20,000/- per month and is liable to maintain her @ Rs.6,000/- per month.

11. The revision petitioners defence was

that the respondent was living separately from him without any sufficient cause. He does not have the means to maintain her. Moreover, she was earning Rs.10,000/- per month.

12. In the celebrated decision in Rajnesh v.

Neha and Anr. [2020 (6) KHC 1], the Hon'ble Supreme Court has held that the Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

13. In Captain Ramesh Chander Kaushal

v. Veena Kaushal & Ors. [(1978) 4 SCC 70], the Hon'ble Supreme Court has declared that the provision of maintenance is a measure of social justice and specially enacted to protect women and children, who fall within the constitutional sweep of Article 15(3) and reinforced by Article 39.

14. In Bhuwan Mohan Singh v. Meena &

Ors. [(2015) 6 SCC 353], the Hon'ble Supreme Court has observed that Section 125 of the Code was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children and the husband is required to earn money even by physical labour, if he is able bodied and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

15. It is well settled in a plethora of judgments that the Courts are permitted to do some guesswork in arriving at the notional income of the husband/father and fixing the quantum of maintenance.

16. Even though the revision petitioner

contended that the respondent was living separately from him without sufficient cause, there is nothing on record to substantiate that he had taken any steps to resume cohabitation with the respondent. He also did not file any petition seeking a decree for restitution of conjugal rights.

17. In Bhuwan Mohan Singh (Supra), it is observed that an able-bodied person is bound to maintain his wife.

18. The revision petitioner was aged 36

years at the time of filing the application. There is nothing to prove that he was suffering from any ailments. Hence, he is assumed to be an able-bodied person. An able-bodied person in the year 2014 is assumed to be earning at least Rs.1000/-

per day for 25 days. Therefore, the revision petitioners monthly notional income can easily be fixed @ Rs.25,000/-. Although the revision petitioner contended that the respondent is earning Rs.10,000/- per month, there is no material on record to prove the said allegation. Thus, I am of the definite view that the impugned

order directing the revision petitioner to pay the

respondent monthly maintenance @ Rs.3,500/- is reasonable and justifiable.

19. After bestowing my anxious

consideration to the pleadings and materials on record, I do not find any illegality, impropriety or irregularity in the impugned order warranting interference by this Court under Section 19(4) of the Family Courts Act, 1984. The revision petition is devoid of any merits and is only liable to be dismissed.

Resultantly, the revision petition is dismissed. Needless to mention, if the revision petitioner has deposited any amount, pursuant to the interim orders of this Court, he would be entitled to adjust the deposited amount, while calculating the balance amount to be paid, as per the impugned order. The Registry is directed to forward a copy of this order to the Family Court, Irinjalakuda, for further proceedings. Sd/- C. S. DIAS
JUDGE

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