

Allapicha vs Naseema

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Court : Kerala Orders

Decided On : Oct-30-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : RPFC/458/2016

Appellant : Allapicha

Respondent : Naseema

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 30TH DAY OF OCTOBER 2023 / 8TH KARTHIKA, 1945 RPFC NO. 458 OF 2016 AGAINST THE ORDER IN MC 159/2013 OF FAMILY COURT, OTTAPPALAM REVISION PETITIONER/RESPONDENT: ALLAPICHA AGED 51 YEARS S/O.ALIMUTHU RAVUTHER (LATE), NEDUMANI VEEDU, KOLLAMKODE P.O., PALAKKAD BY ADVS. SRI.JACOB SEBASTIAN SRI.K.A.SIYAD RESPONDENT/PETITIONER: NASEEMA, AGED 27 D/O.SAITHALAVI, CHENNARIYIL VEEDU, PALLIPPADI, KANHIRAPPUZHA, MANNARKKAD TALUK, PALAKKAD PIN: 678 591. BY ADV SRI.T.K.SANDEEP

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 30.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: R.P(F.C.) NO. 458 OF 2016 2 Dated this the 30th day of October, 2023

ORDER

The revision petition is filed challenging the legality and correctness of the order in M.C.No.159/2013 passed by the Family Court, Ottappalam, directing the revision petitioner to pay the respondent monthly maintenance allowance at the rate of Rs.3000/-. The revision petitioner was the respondent and the respondent was the petitioner before the Family Court.

2. The respondent had filed the application under Section 125 of the Code of Criminal Procedure (in short, Code), against the revision petitioner, seeking monthly maintenance at the rate of Rs.5000/-. It was her case that, she was married to the revision petitioner on

3.5.2012. The revision petitioner had treated her with matrimonial cruelty. Even though he was working as a LIC agent and earning a monthly income of Rs.50,000/-, he refused to maintain her. Hence, the application.

3. The revision petitioner filed his objections

R.P(F.C.) NO. 458 OF 2016 3 denying the allegations in the application. He contended that the respondent annoyed and insulted him, and without any sufficient reason left the matrimonial home. The revision petitioner is only earning a monthly income of Rs.5000/- as a LIC agent. He has to maintain his aged mother. The respondent is working in the Assumption Hospital and is earning a monthly income of Rs.5000/-. In addition to the said income, she and her sister are doing tailoring work at home and is earning a further sum of Rs.5000/- per month. Hence, the application may be dismissed.

4. In the trial, the respondent was examined as PW1 and Exts.P1 to P2 (c) were marked in evidence. The revision petitioner was examined as RW1.

5. The Family Court, after analysing the pleadings and materials on record, by the impugned order, partly allowed the application, by directing the revision petitioner to pay the respondent monthly maintenance allowance at the rate of Rs.3000/- from the date of R.P(F.C.) NO. 458 OF 2016 4 petitioner (24.09.2013).

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

7. Heard; Sri. Jacob Sebastian, the learned counsel appearing for the revision petitioner and Sri. T.K. Sandeep, the learned counsel appearing for the respondent.

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

9. The cardinal contention of the revision petitioner

is that, he is only earning a monthly income of Rs.5000/- and that he has to maintain his aged mother. Moreover, the respondent is working in a Hospital and tailoring work and is getting a monthly income of Rs.10,000/-. Therefore, the revision petition may be allowed by setting aside the impugned order.

10. The revision petitioner admits his marriage with the respondent. The respondents case is that, the revision petitioner treated her with matrimonial cruelty, R.P(F.C.) NO. 458 OF 2016 5 which compelled her to leave the matrimonial home. Although the revision petitioner has sufficient means, he has refused to maintain the respondent. The revision petitioner is working as a LIC agent and getting an income of Rs.50,000/- per month.

11. On the contrary, the revision petitioner took up a contention that the respondent left the matrimonial home without sufficient reasons and he had lodged a man

missing complaint with the police. He has monthly income of Rs.5000/-, and has to maintain his mother. Moreover, the respondent has a monthly income of Rs.10,000/- .

12. Undisputedly, the revision petitioner has not taken any steps to resume cohabitation with the

respondent. He has not filed any petition for a decree of restitution of conjugal rights. Even though he had taken up a contention that the respondent is working in a hospital and doing tailoring work, there is no material to substantiate his assertion. R.P(F.C.) NO. 458 OF 2016 6

13. Thus, the point that remains to be considered is whether the quantum of maintenance awarded by the Family Court is justifiable or not?

14. To substantiate the respondents assertion that

the revision petitioner is an agent in the LIC,

certificate establishes that the revision petitioner was paid the following commission for the financial years.

(i) Financial year 2012-13 - Rs.1,57,761/-

(ii) Financial year 2013- 14 - Rs.1,87,185/-

(iii) Financial year 2014-15 - Rs.1,66,106/- 14.1. In addition to the above commission, the revision petitioner was also paid chief member allowance as follows:-

(i) Financial year 2012 -13 - Rs.13,063/-

(ii) Financial year 2013 -14 - Rs.1675/-

(iii) Financial year 2014 - 15 - Rs.3400/- 14.2. Thus, the revision petitioner received a total R.P(F.C.) NO. 458 OF 2016 7 amount of Rs.5,29,190/- for the financial years 2012-13, 2013-14 and 2014-15 i.e., he had an average monthly income of Rs.14,699/-

15. In view of Ext.P2 certificate issued by the revision petitioners employer, I am of the definite view that Rs.3000/- awarded by the Family Court is quite

reasonable and justifiable. I do not find any error, illegality or impropriety in the conclusion arrived at by the Family Court, warranting interference by this Court under Section 19(4) of the Family Courts Act. The revision petition is devoid of any

merits and is consequentially 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 adjustment of the deposited amount while clearing the arrears. Sd/- C.S.DIAS, JUDGE rmm30/10/2023

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