

Dinesan vs Sasikala

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Court : Kerala

Decided On : Jul-20-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : RPFC/333/2023

Appellant : Dinesan

Respondent : Sasikala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN THURSDAY, THE 20TH DAY OF JULY 2023 / 29TH ASHADHA, 1945 RPFC NO. 333 OF 2023 AGAINST THE ORDER/JUDGMENT MC 341/2019 OF FAMILY COURT, TIRUR REVISION PETITIONER/RESPONDENT DINESAN AGED 59 YEARS S/O MADHAVAN, KOLETHERI HOUSE,PURANGU BY ADVS. K.S.MANU (PUNUKKONNOOR) M.SURESH KUMAR RESPONDENT/PETITIONER SASIKALA AGED 55 YEARS D/O KRISHNANKUTTY KOLETHERI HOUSE,PURANGU THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 20.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 20th day of July, 2023 The revision petitioner is the respondent in M.C. No.341 of 2019 of the Family Court, Tirur. The Maintenance Case is filed by the revision petitioners wife/respondent, alleging that the revision petitioner deserted and refused to maintain her.

2. According to the respondent, the revision petitioner who is running a cycle shop, is a part time magician and is doing business in goats, thereby earning substantial income.

3. The revision petitioner refuted the contention and

submitted that he had sold the cycle shop and is working in the same shop on daily wages. According to the revision petitioner, he has no other avocation and the meagre amount earned as a worker in the cycle shop is not sufficient even for his own sustenance. The revision petitioner also contended that, in a petition filed by the wife under the Protection of Women from Domestic Violence Act, the jurisdictional Magistrate had ordered maintenance at the rate of Rs.2500/- and hence, there cannot be simultaneous demand for maintenance under Section 125

Cr.P.C. The Family Court, after detailed consideration of the evidence and contentions, found the revision petitioner liable to pay maintenance and fixed the quantum of maintenance at Rs.3000/-. Aggrieved, this Revision Petition is filed.

4. The learned Counsel for the revision petitioner

strenuously contended that the Family Court committed an illegality by mulcting the revision petitioner with the liability of paying Rs.3000/- as monthly maintenance allowance, without considering his income earning capacity.

5. A careful reading of the impugned order shows that the

Family Court had considered all relevant aspects like financial capacity of the revision petitioner, inability of the wife to maintain herself and the reason for separation. In such circumstances, no interference is warranted with the impugned

order.

6. As regards the contention that there cannot be

simultaneous demand for payment of maintenance under the DV Act and Section 125 Cr.P.C., the revision petitioner can, at best, seek adjustment of the amounts paid under the DV Act, based on the observation in *Rajnesh v. Neha and Another* [2021

(2) SCC 324]. The RPFC is accordingly dismissed with the above observation.
Sd/- smm V.G.ARUN, JUDGE

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