

P.B.Valsan vs Subi

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Court : Kerala Orders

Decided On : Nov-22-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RPFC/32/2022

Appellant : P.B.Valsan

Respondent : SUBI

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 22ND DAY OF NOVEMBER 2022 / 1ST
AGRAHAYANA, 1944 RPFC NO. 32 OF 2022 AGAINST THE ORDER
DATED 10.12.2021 IN MC.NO.120/2019 OF FAMILY COURT,
MUVATTUPUZHA REVISION PETITIONER/RESPONDENT:
P.B.VALSAN AGED 51 YEARS S/O.BALAKRISHHAN, PILAPPILLI
HOUSE, KADAVOOR KARA, KOOVAPPADY VILLAGE,
KUNNATHUNADU TALUK, NOW RESIDING AT PILAPPILLI HOUSE,
KARIKKOD, OKKAL P.O., CHELAMATTOM VILLAGE, KUNNATHUNAD
TALUK, ERNAKULAM DISTRICT, PIN - 683 550. BY ADV SHERLY
MOL THOMAS RESPONDENTS/PETITIONERS:

1 SUBI AGED 36 YEARS W/O.VALSAN, PILAPPILLI HOUSE, EDAVOOR KARA, ERNAKULAM DISTRICT, PIN - 683 544. 2 AVANI (MINOR) AGED 16 YEARS D/O.VALSAN, PILAPPILLI HOUSE, EDAVOOR KARA, ERNAKULAM DISTRICT, PIN - 683 544, REPRESENTED BY THE MOTHER AND NEXT FRIEND SUBI, AGED 36 YEARS, W/O.VALSAN, PILAPPILLI HOUSE, EDAVOOR KARA, KOOVAPPADY VILLAGE, KUNNATHUNAD TALUK, ERNAKULAM DISTRICT, PIN - 683 544. 3 ASHTAMI (MINOR) AGED 13 YEARS D/O.VALSAN, PILAPPILLI HOUSE, EDAVOOR KARA, ERNAKULAM DISTRICT, PIN- 683 544, REPRESENTED BY THE MOTHER AND NEXT FRIEND SUBI, AGED 36 YEARS, W/O.VALSAN, PILAPPILLI HOUSE, EDAVOOR KARA, KOOVAPPADY VILLAGE, KUNNATHUNAD TALUK, ERNAKULAM DISTRICT, PIN- 683 544. BY ADV BINDU SREEKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 22.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RPFC NO. 32 OF 2022 2

ORDER

This revision petition has been filed under Section 19(4) of the Family Courts Act and the revision petitioner is the respondent in M.C.No.120/2019 on the file of the Family Court, Muvattupuzha.

2. Heard the learned counsel for the revision petitioner as well as the learned counsel appearing for the respondent.

3. In this matter, the respondents herein, who are wife and two minor

children, had approached the Family Court, Muvattupuzha and sought for allowance of maintenance on the ground that they did not have means of maintenance and the allowance of maintenance granted in a previous proceedings under the Protection of Women from Domestic Violence Act (for short the DV Act hereinafter), at the rate of Rs.1,500/- and Rs.1,000/- each, was quite insufficient to

maintain themselves.

4. The revision petitioner filed objection admitting the marriage and

relationship, as contended in the petition. The specific case put up by the revision petitioner in the objection is that, he has been getting Rs.14,144/- and therefore, he is bound to pay maintenance based on the net salary alone and RPFC NO. 32 OF 2022 3 anything more is not legally entitled.

5. Family Court recorded evidence in this matter, The evidence consists of PW1 and Exts.A1 to A17, RW1 and Exts.B1 to B15.

6. The learned counsel for the revision petitioner placed decision of the

Apex Court reported in Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy [2017 (2) KHC 606], and contended that 25% of the husbands net salary alone shall be paid as maintenance and therefore, in the present case, anything in excess of 25% of Rs.14,144/-, is not legally permissible. She also placed another decision of this Court reported in Shinte George v. Lisha P.S. [2020 KHC 5020], to canvass the said point.

7. On perusal of the decision in Kalyan Dey Chowdhury (supra), the

Apex Court considered maintenance claimed under Section 25(2) of the Hindu Marriage Act, 1955, where the husband contended that his net salary was Rs.87,500/-. In the said case, the counsel appearing for the appellant submitted that since the net salary of the appellant was Rs.87,500/-, Rs.23,000/- ordered as maintenance is on higher side and the same should be reduced to Rs.16,000/- per month. But, the appellate court partly allowed the appeal and reduced maintenance to Rs.20,000/- per month.

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8. In Shinte Georges case (supra), this Court reduced Rs.6,000/-

granted as maintenance to Rs.3,754/- rounded to Rs.3,800/- in a case where the husband who was drawing of Rs.15,016/-, after deducting the Provident Fund

alone.

9. In view of the submission, the question is whether the revision

petitioner is liable to pay 25% of Rs.16,159/- as per Ext.B13 (in the counter it has been stated that Rs.14,144/-) as maintenance. As per Ext.B13, the gross salary of the revision petitioner as on 22.3.2021 is Rs.30,303/-. Deductions are shown as under: Deductions (Rs.) P.F. 2,859.00 VPF 4,289.00 LIC 1,886.00 Society 4,975.00 Prof.Tax 1,250.00 Fest.Adv. 600.00 Pay Advance 300.00 -----
16,159.00 =====

10. On perusal of the deduction, it could be seen that Rs.4,975/- is towards recovery of loan arrears to a Society. That apart, Rs.1,250/- is shown RPFC NO. 32 OF 2022 5

as deduction towards Professional Tax. Deduction towards Professional Tax will be made only twice in an year. The revision petitioner cleverly incorporated the said amount also towards monthly deduction, so as to reduce the net salary. That apart, Festival advance to the tune of Rs.600/- and Pay Advance to the tune of Rs.300/- were also shown as deductions. That apart, Rs.1,886/- is shown as deduction towards payment of LIC policy. Thus, it appears that in Ext.B13, the revision petitioner cleverly attempted to show his net salary to the tune of Rs.16,159/-. In fact, in the case in hand, apart from Provident Fund to the tune of Rs.2,859/- and VPF to the tune of Rs.4,289/-, the other deductions are for the reasons stated hereinabove and therefore, the deduction has to be construed as Rs.30,303 - (Rs.2,859+Rs.4289) = Rs.23,155/-. So, correctly calculating the net salary, the same would come to Rs.23,155. If so, the argument advanced by the learned counsel for the revision petitioner to reduce the maintenance amount to 25% of the net salary is not sustainable.

11. In this matter, initially as per the proceedings under the DV Act, Rs.1,500/- was granted to the first respondent herein and Rs.1,000/- each towards the minor children. The said order was not challenged by the revision petitioner in any manner and the same attained the finality. Insofar as RPFC NO. 32 OF 2022 6 maintenance is concerned, the minor children are entitled to a minimum

reasonable amount for their survival. The same cannot be denied for any reasons.

11. Now, as per the present order, the Family Court denied

maintenance to the first respondent on the ground that she has been doing some job and capable of deriving some income, based on her admission during cross examination, while giving evidence as PW1. However, the Family Court granted Rs.2,500/- each more in addition to Rs.1,000/- each granted to the minor children. Thus, the total liability of the revision petitioner to pay the maintenance now is $\text{Rs.1,500} + \text{Rs.1,000} + \text{Rs.1,000} + \text{Rs.2,500} + \text{Rs.2,500} = \text{Rs.8,500/-}$. Going by the salary as on 22.3.2021, the same does not appear to be on higher side and the same is very reasonable. Therefore, this revision is devoid of any merits and is accordingly dismissed. Sd/- A. BADHARUDEEN JUDGE Bb

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