

Abaidkumar vs Nisi

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Court : Kerala

Decided On : Jul-29-2019

Judge : Honourable Mr.Justice a.M.Shaffique,Honourable Mr.Justice N.Anil Kumar

Appeal No. : Mat.Appeal/755/2012

Appellant : Abaidkumar

Respondent : NISI

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE A.M.SHAFIQU & THE HONOURABLE MR.JUSTICE N.ANIL KUMAR MONDAY, THE 29TH DAY OF JULY 2019 / 7TH SRAVANA, 1941 Mat.Appeal.No.755 OF 2012 AGAINST THE ORDER IN OA 935/2011 DATED 03-10-2012 OF FAMILY COURT,KOZHIKODE APPELLANT/RESPONDENT IN OA: ABAIDKUMAR, AGED 41 YEARS, S/O.LATE MR.DHANANJAYAN,PRESENTLY RESIDING AT NO 4, 4TH MAIN ROAD, THILLAI GANGA NAGAR, CHENNAI-600061 BY ADV. SRI.P.M.MOHAMMED SHIRAZ RESPONDENT/PETITIONER IN OA: NISI, AGED 34 YEARS, D/O.VIJAYAN, NEELABAM, MALAPRAMBU

P.O, KOZHIKODE-673009 BY ADV. SRI.P.V.KUNHIKRISHNAN THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 29.07.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 29th day of July 2019

Shaffique, J.

This appeal is filed against an order passed in OA No.935/2011 of the Family Court, Kozhikode directing past maintenance to be paid fixing the maintenance at `5,000/- per month for a period of 32 months. The total amount which is payable is `1,60,000/-.

2. Learned counsel for the appellant submits that this

Court by judgment dated 5/7/2019 had granted divorce on the ground of desertion and there is a finding that as the wife had deserted the appellant, he has no obligation to pay maintenance.

3. Though it is contended by the learned counsel for the

appellant that after 2012, he had resigned his job and is looking after his mother and has no income, evidence indicates that he was a flight attendant attached to Oman Airways during the relevant time and he was drawing a salary of `16,800/- per month. Therefore, it is apparent that he had sufficient income to -:3:-

pay maintenance during the relevant time. The Family Court had directed maintenance to be paid for the previous 32 months from the date of filing the petition. Petition for divorce on the ground of desertion was filed in the year 2010. When the actual date cannot be discerned, as matters stand now, when there is a finding by this Court that the wife had deserted the husband, she becomes also ineligible to get past maintenance. Learned counsel also submits that claim for future maintenance had been rejected by orders passed by the Sessions Court

and revision is pending before this Court.

4. Taking into account these facts, we are of the view

that the wife will be entitled for past maintenance until the date on which the petition for divorce had been filed. Since the date cannot be ascertained, we are of the view that she is entitled for maintenance until 31/12/2010 for a period of 21 months. In the result, this appeal is allowed in part:-

(i) The maintenance awarded by the Family Court shall

stand set aside and it is modified directing the respondent/husband to pay to the petitioner/wife an amount of `1,05,000/- (Rupees One lakh five thousand only). - :4:-

(ii) It is submitted that certain amount had already been

deposited before the lower Court. The balance amount shall be paid within a period of two months, failing which, the said amount shall carry interest @6% per annum from this date till realisation. Sd/- A.M.SHAFIQUE JUDGE Sd/- N.ANIL KUMAR Rp JUDGE -:5:- APPENDIX APPELLANT'S EXHIBITS ANNEXURE A: TRUE PHOTOCOPY OF ORDER DATED 27/4/2012 IN M.C. NO.114 OF 2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I, KOZHIKODE. ANNEXURE B: TRUE PHOTOCOPY OF ORDER DATED 9/10/2012 IN CRL.APPEAL NO.344 OF 2012. ANNEXURE C: TRUE PHOTOCOPY OF RECEIPT DATED 18/9/2012 ISSUED BY JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOZHIKODE. //True Copy// PS to Judge Rp

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