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Haridas Vs. Girija

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Court : Kerala

Decided On : Dec-18-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Haridas

Respondent : Girija

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE18H DAY OF DECEMBER201427TH AGRAHAYANA, 1936 RPFC.No. 482 of 2014 () ---------- AGAINST THE

ORDER
IN MC NO. 24/2014 of FAMILY COURT, OTTAPPALAM DATED155.2014 ---------- REVISION PETITIONER : ---------- P. HARIDAS S/O.KUTTAPPAN GUPTHAN, 53, RAMNAGAR COLONY CHUNNAMBUTHARA, VADAKKANTHARA P.O. PALAKKAD TALUK, PALAKKAD DISTRICT. BY ADV. SRI.P.JAYARAM RESPONDENT : ---------- M.R.GIRIJA D/O.RAMANKUTTY, SARASWATHI NILAYAM, KANJIMANI P.O. KALLADIKKODE, MANNARAKAD TALUK PALAKKAD DISTRICT-678 596. BY ADV. SRI.VINOD KUMAR.C THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON1812-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

VS K.RAMAKRISHNAN, J.

---------- R.P. (F.C.) No.482 of 2014 ---------- Dated this the 18th day of December, 2014

ORDER

The counter petitioner in M.C.No.24/2014 on the file of the Family Court, Ottapalam, is the revision petitioner herein.

2. The petition for maintenance was filed by the respondent herein, who is none other than the wife of the petitioner. It is alleged in the petition that, the marriage between the revision petitioner and the respondent was solemnized on 1.5.1988, and they resided together as husband and wife, and in the wed lock, a son was born and he is a major now. After the birth of the child, there was harassment. So she was compelled to live with the son separately. Thereafter revision petitioner filed O.P.No.214/2007 for restitution of conjugal rights before the Family Court, Palakkad, R.P. (F.C.) No.482 of 2014 2 and that was allowed, and an appeal was filed by the respondent before this court as MAT(Appeal)241/09(D), and the matter was settled in mediation and they started residing together again. Thereafter, again the ill treatment continued. So she was again compelled to leave the house, and reside with her father, who is a retired Government servant, and she requires Rs.7500/- for her maintenance, and she has no income of her own. The revision petitioner is doing his real estate business, and also having landed properties and getting Rs.40,000/- per month. So he is capable of paying maintenance, and she prayed for allowing the application.

3. The revision petitioner who is the respondent in the lower court, admitting the relationship, and also admitted the fact that, earlier petition for restitution of conjugal right was allowed, and while the case was pending before the High Court, the matter was settled and they started living together, R.P. (F.C.) No.482 of 2014 3 and according to the revision petitioner, she left the house voluntarily, without any reason and he is not having any income as claimed in the petition. In fact the respondent was having landed properties and she had let out the house and getting rental income also. Further, the son of the respondent is working and she is being maintained by him. So she is not entitled to get any maintenance. He

prayed for dismissal of the application.

4. The respondent herein as examined as PW1 and Exts.P1 to P3 were marked on her side. The revision petitioner/counter petitioner was examined as RW1, and Ext.D1 to D6 were marked on his side. After considering the evidence on record, the court below found that the respondent is justified in residing separately, and revision petitioner is liable to pay maintenance and fixed the quantum of maintenance at Rs.3,000/- per month, and directed to pay the same from the date of petition, that is being challenged by R.P. (F.C.) No.482 of 2014 4 the revision petitioner by filing this revision.

5. Since the respondent had appeared through counsel, in the delay condonation application and expressed his willingness to appear in the revision also, this court felt that the revision can be admitted and heard and disposed of on merit, today itself. So the revision is admitted and heard and disposed of today itself.

6. The counsel for the revision petitioner submitted that, the respondent is residing separately without any justifiable cause. Further he had taken Life Insurance Polices in the name of the petitioner, that shows that he was affectionate towards the wife. He has no income of his own and he had filed an application for maintenance against the son and that is pending. So under the circumstances, the court below was not justified in allowing maintenance to the respondent herein. However, the amount awarded is excessive. R.P. (F.C.) No.482 of 2014 5 7. On the other hand, the counsel for the respondent submitted that, the evidence of PW1 will go to show that, she was perfectly justified in living separately. Further, the evidence will go to show that he is having real estate business, and getting good income. Further, only after filing of this petition, the respondent filed an application for maintenance against the son, who is aged only 20 years in order to deny payment of maintenance to the respondent interest of bona fide. The amount awarded is also reasonable.

8. It is an admitted fact that, the revision petitioner and the respondent are man and wife, and the marriage was solemnized in the year 1988, and there is a son born to them and he is a major now. It is also an admitted fact that, earlier on account of some misunderstanding they started residing separately, and as per

Ext.D1 order of the Family Court in O.P242007 filed by the revision petitioner herein, a R.P. (F.C.) No.482 of 2014 6 decree for restitution of conjugal right was granted and that was challenged by the respondent before this court, and that was settled in mediation and they started residing together evidenced by Ext.P1 judgment of this court. It is also seen from the evidence that, after some time, she was compelled to go out of the house. Though she was cross examined on the ground that, there is no reason for staying away nothing was brought out to discredit her evidence regarding this aspect. Further the attitude of the husband not paying maintenance when they were residing separated and wanting the son aged only 20 years to pay maintenance also shows that, the respondent was perfectly justified in residing separately. So the finding on that aspect do not call for any interference.

9. The documents produced by the respondent namely Exts.D1 to D6 are not sufficient to come to the conclusion that, the respondent is having sufficient income to maintain herself. It is true that as per Ext.D5 R.P. (F.C.) No.482 of 2014 7 a building belonging to the petitioner was leased out for rent. But it is seen from the agreement itself that there is an endorsement that the building was vacated by the tenant and the deposit was returned. The fact that, the revision petitioner was able to take six LIC polices, and he was paying the premiums on behalf of the petitioner itself shows that, he was having sufficient income for that purpose. Further Ext.P3 document produced by the respondent shows that he had sold the property to one Prasad, and the fact that he is doing real estate business, was not seriously challenged in cross examination as well. He had no case that he is disabled from doing any work. It was admitted that earlier he has conducting a hotel in Chennai, and he was an income tax payee as well. So all these things will go to show that, he is having the capacity to earn and pay maintenance to the wife, and in spite of that, he is not paying any amount. Merely because he had filed an application for maintenance against the son which is R.P. (F.C.) No.482 of 2014 8 under the consideration is not a ground to deny maintenance to the wife, if on the basis of evidence, if it is proved that, he is having the capacity to pay the maintenance. So the courts below were perfectly justified in holding that the respondent is not having any income of her own and unable to maintain herself and the revision petitioner is having income and capacity to pay maintenance and

directed the revision petitioner to pay maintenance to the respondent.

10. As regards the quantum of maintenance is concerned, considering the status of the parties and the cost of living, it cannot be said that the amount of Rs.3,000/- fixed by the court below is excessive. I do not find any reason to interfere with the quantum of maintenance awarded by the court below, as it appears to be just and proper. So the revision lacks merits and same is liable to be dismissed. In the result the revision is dismissed. Office is R.P. (F.C.) No.482 of 2014 9 directed to communicate the order to the concerned courts immediately. Sd/- K.RAMAKRISHNAN, JUDGE /TRUE COPY/ PA TO JUDGE VS

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