

A.Philip Vs. Lizy

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Court : Kerala

Decided On : Nov-24-2014

Judge : Honourable Mr. Justice Dama Seshadri Naidu

Appellant : A.Philip

Respondent : Lizy

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 24TH DAY OF NOVEMBER 2014 3RD AGRAHAYANA, 1936 RPF.No. 136 of 2014 ()
----- AGAINST THE

ORDER

IN MC172011 of FAMILY COURT, KOTTARAKKARA, KOLLAM -----
REVISION PETITIONER/RESPONDENT : -----
A.PHILIP, AGED 52 YEARS S/O. ANTONY, VALUMANNIL VEEDU,
CHEMPAKARAMANALLOOR MURI, ANCHAL, PATHANAPURAM TALUK
KOLLAM DISTRICT. BY ADV. SRI.VINOY VARGHESE KALLUMOOTTIL
RESPONDENT/PETITIONER : ----- LIZY, AGED 45 YEARS D/O.
MARIYAMMA, VENGUVILA VEEDU, NEAR GAS GODOWN NELLIPPALLY P.O.,
VALAKKODU, PATHANAPURAM TALUK KOLLAM-691 001. R BY ADV.
SRI.NIRMAL V NAIR THIS REV.PETITION(FAMILY COURT) HAVING BEEN
FINALLY HEARD ON 24/11-2014, THE COURT ON THE SAME DAY PASSED

THE FOLLOWING: K.RAMAKRISHNAN, J.

----- R.P.(F.C.).No.136
OF2014----- Dated this the 24th day of November, 2014

ORDER

~~~~~ The counter petitioner in M.C.No.17/11 on the file of the Family Court, Kottarakkara is the revision petitioner herein. The application for maintenance was filed by the respondent herein against the revision petitioner claiming maintenance at the rate of Rs.10,000/- per month. It is alleged in the petition that the respondent married the revision petitioner on 16.2.1984 and thereafter they lived together as husband and wife in the joint property held by them and from 30.8.2010 he had neglected to maintain her. She has no job and no independent income to maintain herself. She is depending her mother for her livelihood. The revision petitioner is working in Railway Protection Force and getting Rs.30,000/- per month and he also getting Rs.10,000/- per month as agricultural income as well. She requires Rs.6,000/- for her medical expenses and Rs.4,000/- for her maintenance. He is having sufficient income to pay the same. In spite of that, he is not paying the amount. So, she filed the application claiming maintenance at the rate of R.P.(F.C.)No.136/2014 2 Rs.10,000/- per month.

2. Respondent filed counter affidavit admitting the marriage but denie the allegation that he deserted her on 30.8.2010. He is working in Railway Protection Force on 30.8.2010. The respondent herein informed over phone that she is going to her family house along with her daughter and thereafter she did not return. She is now residing with her mother and siblings. He filed O.P.No.972/2010 for restitution of conjugal rights and that petition was later withdrawn though the respondent did not appear in that case. He had deposited Rs.3 lakhs in the bank in the name of the respondent, which she had withdrawn from the bank. The allegation of cruelty etc. are denied. He is looking after them within his limit. She is not entitled to get any maintenance. So, he prayed for dismissal of the application.

3. Heard both sides.

4. The counsel for the revision petitioner submitted that even in the petition, her claim for maintenance is only Rs.4,000/- and Rs.6,000/- was claimed for her medical expenses. Further, it was admitted by her that the amount of Rs.3 lakhs deposited by R.P.(F.C.)No.136/2014 3 him in the name of the petitioner was withdrawn by her and if it was deposited in a long term deposit, the interest earned would have been sufficient for her maintenance. Further, he is not having the income mentioned and she had left the house voluntarily and these aspects have not been properly considered.

5. The counsel for the respondent submitted that the court below had considered all the aspects including the medical expenses and fixed the amount as Rs.6,500/- per month and that too from the date of order which has not been challenged by the respondent.

6. It is an admitted fact that the revision petitioner and the respondent were man and wife and the marital relationship still subsists and the allegation was that he had deserted her and did not pay maintenance from 30.8.2010. The case of the revision petitioner was that she left the house voluntarily and thereafter she did not come. However, though he filed an application for restitution of conjugal rights, it was admitted at the Bar that it was later withdrawn when he came to understand that she is not willing to come and reside with him. So, under the circumstances, the court below was perfectly justified in R.P.(F.C.)No.136/2014 4 directing the revision petitioner to pay maintenance to the respondent herein.

7. It is an admitted fact that he is working in Railway Protection Force. He did not produce any document to prove his actual income. The court below had taken his income as Rs.30,000/-. Further, no document has been produced to prove that he is having landed properties and getting income out of the same. However, it was admitted by the petitioner and also come out in the evidence by producing Exts.X1 and X2 series and the evidence of CPW2 that the amount of Rs.3 lakhs deposited in the name of the respondent herein was withdrawn by her. According to her, that was utilised for her maintenance and medical expenses. These aspects were considered by the court below. If really this amount was deposited in a long term basis, she would have earned better income and that would have been used for

her maintenance and medical expenses. Further, in the petition she claimed Rs.4,000/- for her maintenance and the major amount of Rs.6,000/- for her medical expenses. Medical expenses will always vary. So, it is very difficult to fix an amount for that purpose and while considering the amount payable, that R.P.(F.C.)No.136/2014 5 also will have to be taken note of for fixing the maintenance amount. Considering the fact that Rs.3 lakhs deposited in the name of the respondent has been withdrawn by her and spent by her within a short period from withdrawal and also considering the fact that after 30.8.2010 the respondent was not paying maintenance to her and the application was filed within few months of such separation, the amount of Rs.6,500/- fixed by the court below appears to be little on the higher side. So, this Court feels that it can be re-fixed as Rs.6,000/- per month and that will meet ends of justice. So, the revision is disposed of by re-fixing the amount of maintenance at the rate of Rs.6,000/- per month from the date of order of the lower court. With the above modification of maintenance amount, the revision is allowed in part and disposed of. Sd/- K.RAMAKRISHNAN, JUDGE. ps/25/11/2014

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