

Mineesh Vs. Resna K

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Court : Kerala

Decided On : Nov-21-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Mineesh

Respondent : Resna K

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 21ST DAY OF NOVEMBER 2014 30TH KARTHIKA, 1936 RPFC.No. 381 of 2014 ()
----- MC.NO. 58/2013 OF FAMILY COURT, VATAKARA
----- REVISION PETITIONER/RESPONDENT :
----- MINEESH, S/O.KUNHIKANNAN, AGED 38 YEARS, PARAMBIL HOUSE, MOODADI POST, KOYILADI AMSOM, MOODADI DESOM, KOYILANDI TALUK, KOZHIKODE. BY ADVS.SRI.P.R.SREEJITH SRI.M.PROMODH KUMAR
RESPONDENT/RESPONDENT : ----- RESNA K., D/O.SASIDHARAN, AGED 32 YEARS, KALATHIL HOUSE, CHIRAKKARA POST, THIRUVANGAD AMSOM, DESOM, THALASSERY TALUK, KANNUR DISTRICT- 670 101 BY ADVS. SRI.NAGARAJ NARAYANAN SRI.SAIJO HASSAN SRI.BENOJ C AUGUSTIN SRI.PRATHAP PILLAI SRI.SEBIN THOMAS SRI.VIVEK V. KANNANKERI SMT.J.KASTHURI SRI. VISHNUBHUVANENDRAN SMT.AMRITA JAYARAM THIS REV.PETITION(FAMILY COURT) HAVING BEEN

FINALLY HEARD ON 21.11.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts K. Ramakrishnan, J.

===== R.P.(F.C.).No.381 of 2014
===== Dated this, the 21st day of November, 2014.

ORDER

Counter petitioner in M.C.No.58/2013 on the file of the Family Court, Vatakara is the revision petitioner herein.

2. The respondent herein who is the wife of the revision petitioner filed the application for maintenance under Section 125 of the Code of Criminal Procedure.

3. It is alleged in the petition that the revision petitioner married the respondent on 27.07.2003 as per custom and they were living together as husband and wife and there is no issues in the wedlock. After sometime, the relationship strained and he treated her cruelly and that prompted her to go away from the matrimonial home and start residing separately. The revision petitioner was working abroad and getting a monthly income of Rs.50,000/- and after she started residing separately, he did not provide any maintenance though he is capable of providing maintenance. She is without any employment and so, she has no other option except to file the application for maintenance at the rate of Rs.5,000/- per month.

4. Earlier, the respondent appeared, but, later he had R.P.(F.C.).No.381 of 2014 :

2. : not appeared and filed any counter and he was set ex parte and the learned Family Court Judge passed Ex parte order directing the revision petitioner to pay maintenance to Rs.4,000/-. Later, he filed C.M.P.No.48/2014 to set aside the ex parte order and the same was set aside and thereafter he filed counter admitting the marriage, but denied the allegations of cruelty mentioned in the petition. He had also further submitted that as per order in O.P.No.157/2013 dated 28.09.2013, the marriage between the revision petitioner and respondent was dissolved and at present, she is not his wife. The respondent herein is having her own income. She had undergone U.G.C. Course and got through Civil Service

Entrance Examination and she is getting not less than Rs.25,000/- from her employment. The revision petitioner is earning an amount of Rs.15,000/- from his employment and used to send money to the respondent and her father. He has no landed properties. The allegation that the revision petitioner is getting a monthly income of Rs.50,000/- and also income of Rs.10,000/- from landed property etc is not correct. She is residing away without any reasonable cause. So, she is not entitled for any maintenance and prayed for dismissal of R.P.(F.C.).No.381 of 2014 :

3. : the application.

5. The respondent herein was examined as PW1 and no documents were marked on her side. The revision petitioner produced Exts. B1 to B7, but no oral evidence was adduced on his side. After considering the evidence on record, the learned Family Court Judge found that since she is a divorced wife now, she is entitled to get maintenance under Section 125 of the Code of Criminal Procedure and she is unable to maintain herself and the revision petitioner is capable of providing maintenance and fixed the maintenance amount Rs.5,000/- per month. This is being challenged by the revision petitioner by filing the revision.

6. Since the respondent had already appeared, this court felt that this can be disposed of on merit after hearing both sides today itself.

7. Heard both sides.

8. The Counsel for the revision petitioner submitted that the court below found fault with the revision petitioner for not giving any oral evidence regarding his employment and income, but he had produced his passport which will go to show that his residential visa has been cancelled. So, he R.P.(F.C.).No.381 of 2014 :

4. : cannot go abroad and work. The quantum of maintenance fixed by the court below is excessive. Further, when the ex parte order has been passed, court below had only awarded maintenance at the rate of Rs.4,000/-. But, thereafter, it was enhanced to Rs.5,000/- now which is excessive.

9. On the other hand, the Counsel appearing for the respondent submitted that court below had correctly appreciated the evidence and the quantum of maintenance fixed is reasonable.

10. The fact that the revision petitioner married the respondent and they lived as husband and wife for sometime and thereafter, they were living separately is not in dispute. Further, it was also in a way admitted by the revision petitioner in his counter itself that respondent herein filed O.P.No.157/2013 before the Family Court for dissolution of marriage on the ground of cruelty and an ex parte order of divorce has been passed and no appeal has been preferred against that order by the revision petitioner. So, that shows that, now the status of the parties have been changed and the respondent herein is the divorced wife of the revision petitioner. R.P.(F.C.).No.381 of 2014 :

5. :

11. In the case of a divorced wife, till she re-married or she gets employment and getting income to maintain herself, the former husband is liable to pay reasonable maintenance to her for her existence. He had produced Ext.B7 passport which was not relied on by the court below as it was a photostat copy But, the court below ought to have obtained the original passport from the revision petitioner before marking Ext.B7 to satisfy regarding the contents of the same. Having marked the same without following that procedure, court below was not justified in rejecting the same as such especially when he appeared in person and conducted the case. There is no documentary evidence adduced to prove that he was having any employment abroad now. If the entries in the passport is accepted, then, he is not now employed abroad. But, that is not a ground for denying maintenance to the divorced wife. Though the revision petitioner had a case that she had passed the Civil Service Entrance Examination and also passed U.G.C.Course and having employment and getting reasonable salary, no evidence has been adduced to prove these facts and the suggestion given to PW1 on this aspect was denied by her as well. So, under the circumstances, court below was R.P.(F.C.).No.381 of 2014 :

6. : perfectly justified in coming to the conclusion that the revision petitioner was capable of paying maintenance and the respondent had proved that she is unable to maintain and she is not having any income to maintain herself and she is depending on her parents for her livelihood. So, considering the over all circumstances, this court feels that since the court below had passed an ex parte order of maintenance at the rate of Rs.4,000/- without much evidence, enhanced the same to Rs.5,000/- appears to be on the higher side. So, fixing the maintenance as Rs.4,000/- will be reasonable and that will meet the ends of justice as far as both the parties are concerned. So, the maintenance amount fixed by the court below is re-fixed as Rs.4,000/- per month and he is liable to pay maintenance at this rate from the date of petition and two months time is granted to the revision petitioner to pay the arrears in two monthly installments. If any amount has been already paid or deposited as directed by this court, then, that can be adjusted towards this amount and any amount deposited is directed to be released to the respondent by the court below. With the above modification of the maintenance amount R.P.(F.C.).No.381 of 2014 :

7. : alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the court below at the earliest. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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