

Baiju Vs. Valsala

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Court : Kerala

Decided On : Aug-23-2006

Reported in : 2006(4)KLT252

Judge : Kurian Joseph, J.

Acts : [Family Courts Act, 1984](#) - Sections 19, 19(1), 19(2), 19(3), 19(4) and 19(5); Family Courts (Amendment) Act, 1991; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 to 128

Appeal No. : C.R.P. No. 1801 of 2003

Appellant : Baiju

Respondent : Valsala

Advocate for Def. : Philip T. Varghese and; Thomas T. Varghese, Adv.

Advocate for Pet/Ap. : B. Premod and; T.R. Sathyan, Adv.

Judgement :

ORDER

Kurian Joseph, J.

1. Whether a revision will lie against an interlocutory order passed by the Family Court is one of the questions to be considered in this Civil Revision Petition. Section 19 of the [Family Courts Act, 1984](#) reads as follows:

19. Appeal.--

(1) Save as provided in Sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973, (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973(2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act 1991.

(3) Every appeal under the section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in

which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure. 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under Sub-section (1) shall be heard by a Bench consisting of two or more Judges.

Section 19(1) excludes appeals from interlocutory orders and Sub-section (2) excludes appeals from decree or order passed with the consent of the parties and from an order passed under Chapter IX of the Code of Criminal Procedure. Chapter IX of the Code of Criminal Procedure deals with orders for maintenance of wives, children and parents. In respect of orders on those aspects covered by Chapter IX of the Code of Criminal Procedure (Sections 125 to 128) the Act provides for revision before the High Court either suo motu or on application for examining the correctness, legality or propriety of the order or regularity of the proceedings. There is also an exclusion with regard to interlocutory orders passed under Chapter IX of the Code of Criminal Procedure. However, it is open to the High Court to examine the regularity of any proceedings in a revision under Section 19(4). Sub-section (5) makes it crystal clear that except as provided under Section 19(1), (2) and (4) no appeal or revision lies to any court from any judgment or order or decree of a Family Court. The contention of the learned Counsel appearing for the petitioner is that in view of the exclusion of the appellate remedy under Sub-sections (1) and (2) of Section 19 it is open to the petitioner to have the remedy of revision, in terms of the general principles under Section 115 of the Code of Civil Procedure. In the absence of a specific exclusion clause, probably the contention could have been appreciated.

However, in view of the statutory exclusion of revision except in the case of an order under Chapter IX of the Code of Criminal Procedure regarding maintenance no revision shall lie in any court in respect of orders either interlocutory or final passed by the Family Court.

2. Though the Civil Revision Petition is liable to be dismissed on that sole ground I may also refer to the factual situation in the instant case. This Civil Revision Petition is filed against the order dated 3-7-2003 in I.A. No. 1080/2002 in O.P. No. 458/1998 on the file of the Family Court, Kottayam. The application was filed for referring the respondent to the Medical College Hospital, Kottayam for assessing infertility. The original petition is filed praying for a decree of divorce. It is submitted that the grounds taken are matrimonial fraud and cruelty, matrimonial fraud in the sense that the respondent suppressed her incapacity to conceive. Admittedly the petitioner has treated the respondent in several hospitals including the hospitals at Kottayam. It is the submission that of the two doctors from Kottayam, one did not turn up to tender evidence and the other is laid up. It is for the petitioner to take appropriate steps in such circumstances. On that ground the Family Court cannot be faulted in having rejected the petition, particularly one filed after closing the evidence of both the parties, as stated at paragraph 6 of the order. Moreover, the Family Court has also observed that since the petitioner has taken the respondent for treatment before various doctors including the treatment under the Ayurvedic system '...the petitioner could produce documents showing the treatment and results and it will convince the court'. Thus on merits also the petition is liable to be dismissed. It is accordingly dismissed.

3. Learned Counsel for the respondent submits that the petition filed in 1998 is still pending before the Family Court and the matter is delayed for the last three years because of the pendency of the Civil Revision Petition. The respondent may move the Family Court and taking note of the submissions as observed above, the needful action for expeditious disposal of the petition will be taken by the Family Court.