

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

Crl.Rev.Pet.No. 319 of 2014 ()

AGAINST THE ORDER CMP.7309/2013 IN MC 4/2013 of
J.M.F.C.-I,THAMARASSERY DATED 28-12-2013

REVISION PETITIONER(S)/PETITIONER/RESPONDENT:

SHOUKATH, AGED 44 YEARS
S/O.KHALID, NAMBASSERI HOUSE, THIRUMALA
MULLAKKAL VILLAGE, ALAPUZHA DISTRICT.

BY ADVS.SRI.K.B.ARUNKUMAR
SRI.RANJIT BABU

RESPONDENT(S)/RESPONDENT/PETITIONER:

- 1.HASEENA KALATHINGAL,, AGED 40 YEARS
D/O.KASIM, RASHID MANZIL, MANIPURAM(PO)
KODUVALLY, KOZHIKODE DISTRICT, PIN-673572.

2.STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-31

R1 BY ADV. SRI.PRATHEESH.P
R2 BY PUBLIC PROSECUTOR SMT.M.MADHUBEN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
23-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-1:TRUE COPY OF THE ORDER DATED 22.02.2013 IN M.C.NO.4/2013
ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
THAMARASSERY.

ANNEXURE 2:TRUE COPY OF THE PETITION FILED BY THE RESPONDENT HEREIN
NUMBERED AS CMP.NO.5685/2013 IN M.C.4/2013.

ANNEXURE-3:TRUE COPY OF THE AGREEMENT DATED 15.07.2011 ENTERED INTO
BETWEENTHE RESPONDENT HEREIN AND REVISION PETITION.

ANNEXURE-4:TRUE COPY OF THE PETITION TO SET ASIDE EX PARTE NUMBERED
AS CMP.7309/2013 DATED 23.11.2013.

ANNEXURE-5:TRUE COPY OF THE PETITION TO CONDONE DELAY NUMBERED AS
CMP.7310/2013.

RESPONDENT'S EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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Crl.R.P.No.319 OF 2014

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Dated this the 23rd day of January, 2015

ORDER

The revisionist filed the captioned revision petition challenging the order of the Court of Judicial First Class Magistrate-I, Thamarassery in CMP No.7309 of 2013 in M.C.No.4 of 2013. The respondent herein who was the wife of the revision petitioner earlier filed the M.C. seeking maintenance under section 3 of Muslim Women (Protection of Rights on Divorce) Act. That M.C was decreed ex parte and it was allowed as follows:-

- i. Respondent is hereby directed to pay ₹9,000/- towards expenses for iddath period @ ₹3,000/- per month.
- ii. Respondent is directed to pay ₹1,50,000/- being the balance amount payable and towards the value of gold ornaments and money.
- iii. Respondent is directed to pay ₹5 lakhs to the petitioner towards fair and reasonable provision and maintenance.

iv. Respondent is directed to pay ₹1,500/- to the petitioner towards cost of this petition.

2. Subsequently, the petitioner filed C.M.P.No.7309 of 2013 in the said M.C seeking to set aside the ex parte order dated 22.2.2013. There was a delay of 242 days in filing that petition. The learned Magistrate found that despite such a long delay, no affidavit was filed along with the petition to explain the delay. What is stated in the petition is that he was employed in Mangalore. The learned Magistrate found the reason assigned for the delay in filing the application for setting aside the ex parte order as insufficient and consequently, dismissed the petition. It is raising challenge against the said order that this revision petition has been filed.

3. When this matter came up for admission on 13.2.2014, while issuing notice to the first respondent, the petitioner was directed to deposit an amount of ₹3,00,000/- before the court below.

Subsequently, the respondent entered appearance. The parties attempted for a settlement of the issues out of court. Having succeeded in that attempt, they filed Annexure-A which is a copy of the agreement executed between them on 17.12.2014. The learned counsel for the respondent would endorse the submission made by the the learned counsel for the petitioner that the matter has been settled and the terms and conditions have been incorporated in Annexure-A. Annexure-A would reveal that the entire amount which was directed to be paid to the respondent viz., ₹660000 was paid directly to the first respondent by the revision petitioner. The learned counsel for the respondent submitted that the entire amount due under Annexure-I order dated 22.2.2013 has been received by the respondent. In such circumstances, as per the terms of agreement, the revision petitioner could apply for refund of the amount now, remaining in deposit before the trial court. Annexure-A will form part of this order. Taking note of the fact that the petitioner has already paid the amount covered by Annexure-A to the respondent the petitioner is permitted

to move appropriate application before the learned Magistrate for getting refund of the amount deposited pursuant to order of this Court on 13.2.2014. In such circumstances, the impugned order is set aside and it is ordered that hereinafter, the parties are bound by the terms and conditions in Annexure-A.

This revision petition is disposed of accordingly.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

