

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

Mat.Appeal.No. 77 of 2015 ()

AGAINST THE JUDGMENT IN OP 1123/2013 of FAMILY COURT,
TRIVANDRUM, DATED 29-11-2014

APPELLANT(S)/RESPONDENT:

DEEPA .K., AGED 35 YEARS,
D/O. PADMAVATHI AMMA, AMBADI, CHITHRA NAGAR-45,
TC 17/752, POOJAPPURA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.AJAYA KUMAR. G

RESPONDENT(S)/RESPONDENTS 1 TO 3:

SANTHOSH KUMAR .V., AGED 46 YEARS,
S/O. K.VISWANATHAN NAIR, RESIDING AT MAKAM,
TC 10/1940/2 THOZHUVANKODU LANE, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM - 695 013.

BY ADV. SRI.S.D.ASOKAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

**C.K. ABDUL REHIM &
K. RAMAKRISHNAN, JJ.**

Mat. Appeal No.77 of 2015

Dated this the 9th day of June, 2015

JUDGMENT

K. Ramakrishnan, J

Wife / respondent in O.P.No.1123/2013 on the file of the Family Court, Thiruvananthapuram is the appellant herein. O.P.No.1123/2013 was filed by the respondent herein, who is the husband for dissolution of marriage under Section 13 of the Hindu Marriage Act.

2. It is alleged in the petition that the marriage between them was solemnized on 24.04.2003 at Attukal Karthika Auditorium, Thiruvananthapuram, as per Hindu religious rites and two children were born to them in that wedlock. On the 3rd day of marriage, respondent's mother came to the petitioners house and had taken some gold ornaments of the respondent. When this was questioned, she abused him with obscene language and she had even slapped him. The respondent often picked up quarrel with

the petitioner for silly reasons. Respondent's sister's husband who is a senior Civil Police Officer in Neyyattinkara police station often called the respondent and petitioner advised her to stop the relationship. The petitioner purchased 14.5 cents of property with a house and modified the house and shifted the residence to that house. Petitioner was working as Junior Assistant in Civil Supplies and he was transferred to Ambalappuzha. Respondent's parents persuaded the petitioner to come back to Thiruvananthapuram and reside with them. Believing their words, he again shifted his residence to Thiruvananthapuram and respondents parents also joined with them and the respondent treated him cruelly both physically and mentally and their marital relationship was irretrievably broken down. So the petitioner filed a petition for dissolution of marriage.

3. Though notice was served on the respondent and appeared, but did not file any statement. So she was

set ex-parte and it posted for petitioner's evidence. Petitioner filed proof affidavit and the learned Family Court, Judge, after considering the proof affidavit and the contentions, passed the impugned order, dissolving the marriage between the appellant and the respondent. Aggrieved by the same, the present appeal has been preferred.

4. Considering the circumstances and also considering the fact that respondent appeared, we feel that the appeal can be admitted and disposed of on merit today itself.

5. Heard the counsel for the appellant and respondent.

6. The counsel for the appellant submitted that, there is no reasons given or speaking order passed by the court below and in the case of a matrimonial dispute, court is expected to record a finding regarding the existence of the grounds of dissolution of the marriage, that was not

done in this case. So he prayed for an opportunity to meet the case on merit.

7. On the other hand, the counsel for the respondent submitted that she had not file any application for set aside the ex-parte order, instead she came before this court with an appeal and as this court has only limited power to interfere with the judgment passed by the court below.

8. It is an admitted fact that the appellant and respondent were man and wife and there was some dispute between them and they are residing separately. It is also an admitted fact that there were two children born to them in the wedlock. The main allegation laid in the petition was divorce was one of cruelty. But it is true that the respondent though appeared did not file statement and she was set ex-parte and the respondent herein filed proof affidavit. Merely because, the respondent was ex-parte, court is not expected to accept the affidavit and pass a non-speaking order

especially in the case of matrimonial cases. Court has to satisfy regarding the allegations made in the petition and record a finding as to whether any of the grounds for dissolution as set out in Section 13 of the Hindu Marriage Act has been made out for the purpose of granting the relief. But such an exercise has not been done by the court below in this case. So under the circumstances, there is some force in the submission made by the counsel for the appellant that the court below is not justified in passing a non-speaking order in the matrimonial matters and on that ground the order passed by the court below is liable to be set aside and we do so and remit the matter for the court below in accordance with law. We made it clear that, if the appellant files an application for setting aside the ex-parte order under Order-9 and Rule-7 of the Code of Civil Procedure, as the ex-parte judgment and decree have been set aside and it is sent back for fresh disposal, then court below is directed to consider and pass appropriate orders in

that application and if that application is allowed, permit the appellant to file counter statement and after giving an opportunity to adduce evidence by both parties dispose of the case in accordance with law on merit. The parties are directed to appear before the court below on 13.07.2015. Office is directed to communicate this order to the concerned court, immediately.

The appeal is allowed and disposed of as stated above.

Sd/-

C.K. Abdul Rehim, Judge

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge