

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

Mat.Appeal.No. 146 of 2015 ()

AGAINST THE ORDER DATED 17-03-2014 IN OP 265/2013 of
FAMILY COURT, THALASSERY.

APPELLANT:

FAISAL K.V.
AGED 41 YEARS, S/O. ANDOOTTY,
RASHEEDA MANZIL, KADAMBUR ROAD
EDAKKAD PO, KANNUR TALUK
REPRESENTED THROUGH POWER OF ATTORNEY HOLDER FATHER
ANTHOOTTY @ ABDURAHIMAN
S/O LATE MOOSA, AGED 71 YEARS,
RASHEEDA MANZIL, KADAMBUR ROAD,
EDAKKAD (PO) KANNUR TALUK

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENT:

SUFAIJA T.V.,
AGED 26 YEARS, D/O. UMMER,
ROULA MANZIL, VELLAPPARA
VATTAKKULAM PO, ATTADAPPA,
EDAKKAD AMSOM KANNUR 670

BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 01-07-2015, ALONG WITH MAT. APPEAL No.153/2015 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

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

Mat. Appeal Nos. 146 & 153 OF 2015

DATED THIS THE 1st DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

Respondent in OP 265/2013 of the file of Family Court, Thalassery is the appellant in Mat. Appeal No.146/2015 and the same respondent in OP 279/2013 in the same court is the appellant in Mat Appeal No.153/2015.

2. The appellant and respondent in Mat. Appeal No.146/2015 are husband and wife and respondents in Mat. Appeal No.153/2015 are the wife and daughter of the appellant in both the cases. The marriage between the appellant and the respondent in Mat. Appeal 146/2015 was solemnized on 26-11-2008 as per custom prevailing in the Muslim community to which both of them belongs and in that wedlock 2nd respondent in Mat. Appeal 153/2015 was born. According to the wife, at the time of marriage 40 sovereigns of Gold ornaments were given and she was not

allowed to pursue her M.B.A course. After the marriage the relationship strained. No maintenance was paid by the appellant either to the wife or to the child and he was working in Gulf. The wife requires Rs.5,000/- per month and daughter requires Rs.4,000/- per month as maintenance. The maintenance amount was due for merely more than 3 years now. They have started living separately due to difference of opinion. That prompted the wife along with child to file OP 279/2013 before the Family Court for return of Gold ornaments and past maintenance and also to file OP 265/2013 for divorce on the grounds under Section 2 (ii), 2 (iv), 2 (viii) (a), (d) & (e) of the Dissolution of Muslim Marriage Act, 1939. Though the appellant appeared through his father power of attorney, he did make any steps to file statement. So he was declared exparte. In both these cases the wife was examined as PW1 and Exts.A1 to A5 were marked in OP 265/2013 and A1 to A6 were marked in OP 279/2013 and court below allowed both the OPs granting a decree for dissolution of marriage and also

directing the appellant herein to pay arrears of maintenance of Rs.1,80,000/- to the wife and Rs.1,44,000/- to the child and also Rs.9,00,000/- towards the value of Gold ornaments and Rs.1,25,000/- for her education expenses. Aggrieved by the same the above respective appeals have been preferred by the appellant in both these cases.

3. Heard counsel for the appellant and respondents.

4. Counsel for the appellant submitted that since he was working abroad, he could not come down to India and contest the case. There was no willful latches on the part and he prays for an opportunity to contest the case.

5. The prayer was opposed by the counsel for the respondents on the ground that there was no illegality committed by the court below in passing the exparte decree and he had not filed any application to set aside the exparte decree before the court below.

6. It is an admitted fact that the appellant and respondent in Mat. Appeal No.146/2015 are man and wife and 2nd respondent in Mat. Appeal 153/2015 was born in

that wedlock. It is also an admitted fact that the relationship strained and they were living separately. Considering the fact that it relates to a matrimonial dispute and also huge monetary liability is also fastened on the appellant, we feel that an opportunity has to be given to him to meet the case on merit. But at the same time as rightly pointed out by the counsel for the respondents that he has not paid maintenance to the wife and child for more than 3 years. So considering the circumstances we feel that both the appeals can be allowed and exparte decrees passed in both the cases can be set aside on condition that appellant shall deposit arrears of maintenance at 50% as fixed by the court below; namely Rs.1,72,000/- in two monthly equal installments and we also fix an amount of Rs.2,000/- to the 1st respondent and Rs.1,500/- to the 2nd respondent as an interim maintenance during pendency of the proceedings in the court below which the appellant has to pay during the pendency of the proceedings. If the appellant deposits Rs.1,72,000/- towards arrears of maintenance as mentioned

above, then the court below is directed to set aside the exparte decrees passed against him in both cases and give him an opportunity to file objections and then contest the cases on merit. If the amount is not deposited within that time, then the exparte orders passed by the court below will revive. If the amount is deposited, the 1st respondent is permitted to withdraw the amount for herself and on behalf of the minor child. This amount will be adjusted towards ultimate amount to be ordered by the court below after trial.

7. With the above directions and observations these appeals are disposed of.

8. Communicate this judgment to the concerned court immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge