

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

Mat.Appeal.No. 242 of 2015 ()

AGAINST JUDGMENT AND DECREE DATED 29-11-2014 IN OP 223/2013 of
FAMILY COURT, KANNUR

APPELLANT/RESPONDENT:

K.V.THOMAS VARGHESE @ CHRISTY,
AGED 52 YEARS, VARGHESE KIZHAKKEKARA HOUSE,
PADICHIKKAMALA CHUZHALI PO, CHUZHALI AMSOM DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER

RESPONDENT/PETITINER:

SUSAMMA THOMAS @ ANNAMMA,
AGED 50 YEARS, W/O. K.V. THOMAS,
KIZHAKKEKARA HOUSE, PAPPUMKARA
CHUZHALI AMSOM, NIDUVALOOR DESOM,
TALIPARAMBA TALUK, KANNUR DISTRICT 670142

BY ADVS. SRI.V.MANOJ KUMAR
SRI.IYPE JOSEPH

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 17-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

Mat. Appeal No.242/2015

APPENDIX

PETITIONERS' EXHIBITS

ANNEXURE-I - TRUE COPY OF THE ORDER IN MC 43/2007 DATED 18-05-2010.

ANNEXURE-II - TRUE COPY OF THE ORDER IN CRL.M.P. 1420/2010 IN
CRL. APPEAL NO.245/2010 DATED 21-06-2010.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

Mat. Appeal No. 242 OF 2015

DATED THIS THE 17th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

Husband-respondent in OP 223/2013 on the file of Family Court, Kannur is the appellant herein.

2. The original petition was filed by the respondent-wife against the appellant-husband seeking past maintenance @ Rs.6,000/- per month for the period from 05-08-2011 to 19-03-2013 for an amount of Rs.1,17,000/- and treatment expenses of Rs.1,00,000/-. It is mentioned in the petition that the marriage was solemnized on 30-12-1985 and two children were born to them in the wedlock and thereafter due to difference of opinion, they started living separately from 16-07-2005. Since no maintenance was paid, she filed OP 552/2011 for realisation of past maintenance from 04-11-2008 to 04-08-2011 and it was allowed by the Family Court by order dated 14-03-2013. She was suffering from abnormal uterine bleeding and she is

undergoing treatment and requires Rs.6,000/- per month as maintenance. Further an amount of Rs.2,17,000/- was spent by her for treatment. He is working as an Aluminium Fabricator in Gulf country and getting a salary of Rs.50,000/-. He is also having landed properties and getting an additional income of Rs.1,00,000/- per annum. So he is capable to pay maintenance. She is without any employment. Hence the petition.

3. The appellant entered appearance and filed counter affidavit denying the allegations and also submitted the reason for her living away from the matrimonial home. It is alleged that the people in the locality found her indulging in sexual intercourse with somebody and so she was expelled from the house. Thereafter she started residing separately. She filed M.C 43/2007 before the Judicial First Class Magistrate court Thaliparamba under the provisions of Protection of Woman from Domestic Violence Act and the Magistrate has ordered Rs.1,500/- per month as an interim maintenance and that was challenged by him by filing an appeal before the Sessions Court,

Thalassery as Crl. Appeal No.245/2010 and the appellate court had reduced the maintenance to Rs.750/- per month and he is paying the amount without any default. Thereafter she filed OP 928/2008 before the Family Court, Kannur for past maintenance and his property was attached and the matter was settled for an amount of Rs.2,00,000/-. Thereafter he filed OP 53/2011 for obtaining a decree for divorce. Thereafter the petitioner filed OP 552/2011 for past maintenance and that was allowed @ Rs.1,500/- per month. The appeal was filed and that was dismissed and she filed application for execution and during execution petition, he paid that amount. She is now employed and getting income. She is also having half acre rubber estate and working as LIC agent and Pigmy collection agent of the bank. She is working as scribe under an advocate. So she is not entitled for any maintenance and prayed for dismissal of the application.

4. The respondent herein was examined as PW1 and the appellant was examined as RW1 and Exts.A1 to A43 and B1 to B5, B6 series, B7 series and B8 to B38 were marked

on both sides. After considering the evidence on record, the court below found that the appellant is liable to pay maintenance and fixed the maintenance @Rs.2,000/- per month and directed to pay past maintenance at that rate for the period claimed; namely 05-08-2011 to 19-03-2013. This decree is being challenged by the appellant by filing the above appeal.

5. Since the respondent entered appearance and also considering the fact it relates to maintenance claim, this court felt that the appeal can be admitted and heard and disposed of today itself after hearing both sides. So the appeal is admitted to file and heard and disposed of today itself.

6. The counsel for the appellant submitted that the respondent is working as an Advocate clerk and also getting income as LIC agent and Pigmy collection agent and in the Domestic Violence case, the appellate court reduced the maintenance to Rs.750/-. So the amount of Rs. 2,000/- fixed by the court below is excessive. Since she is employed and getting income, she is not in fact entitled for any

maintenance as well. Further the court below had treated the same petition under the provisions of the Hindu Adoption and Maintenance Act and mulcted with the liability on the husband to pay past maintenance as that Act is not applicable since parties are Christian.

7. On the other hand the counsel for the respondent submitted that amount of Rs.2,000/- is fixed by the court below is very reasonable considering the fact that she is undergoing treatment.

8. It is an admitted fact that the appellant and respondent are husband and wife and there were two children born to them in that wedlock and from 2005 onwards, they were living separately. It is also admitted that marital relationship is still subsisting. Further documents produced namely Ext.A1 will show that in an earlier proceedings, past maintenance was granted @ Rs.1,500/- per month. She had produced Ext.A2 to A43 to prove that she is undergoing treatment and requires huge amount towards treatment expenses. It is also admitted that in the Domestic Violence proceedings, the Magistrate has

ordered Rs.1,500/- as monthly maintenance which was reduced to Rs.750/- by the appellate court. All those happened in the year 2010. The documents produced by the appellant will go to show that she requires some enhancement in the maintenance amount considering the treatment that she is undergoing. However considering the fact that the appellant is also having some difficulties, we feel that the amount of Rs.2,000/- fixed by the court below appears to be on the higher side which we feel can be refixed as Rs.1,500/- per month which is reasonable and that will meet the ends of justice as far as the both parties are concerned. So the appeal is allowed in part, setting aside to the extent of the quantum of maintenance fixed by the court below as Rs.2,000/- per month and re-fixing the same as Rs.1,500/- per month and the respondent is entitled to get maintenance at that rate from 05-08-2011 to 19-03-2013. If any amount has been paid by the appellant during this period towards this amount, that can be adjusted towards the arrears of maintenance payable at the rate refixed by this court.

9. With the above modification of the decree and judgment passed by the court below, the appeal is allowed in part and disposed of accordingly.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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P.A. to Judge