

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Mat.Appeal.No. 613 of 2015 ()

AGAINST THE JUDGMENT IN OP 818/2013 of FAMILY COURT, KANNUR DATED
28-10-2014

APPELLANT(S) /RESPONDENT:

K.MUSTHAFA AGED 67 YEARS

S/O.ABOOBACKER HAJI, KUTTUKKAN HOUSE, PULINGOME
CHERUPUZHA VIA, P.O.CHUNDA, KANNUR DISTRICT.

BY ADVS.SRI.T.R.RAVI

SRI.JAWAHAR JOSE

SRI.V.VINAY MENON

SMT.CISSY MATHEWS

SRI.ARUN AJAY SHANKAR

RESPONDENT(S) /PETITIONER:

K.RUKIYA, AGED 58 YEARS

W/O.K.MUSTHAFA, KATTOOR HOUSE, SAREENA MANZIL
THAYINERI, PAYYANNUR AMSOM, PAYYANNUR P.O.
TALIPARAMBA TALUK, KANNUR DISTRICT.

R1 BY ADV. SRI.M.V.AMARESAN

BY ADV. SRI.V.N.RAMESAN NAMBISAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

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Mat.Appeal No.613 of 2015

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Dated this the 19th day of November, 2015

ORDER

Mary Joseph, J.

- 1.The respondent in O.P No.818/2013 of the Family Court, Kannur is before this court assailing the part of the common judgment of the said court dated 28.12.2014 decreeing O.P No.818/2013.
- 2.O.P No.818/2013 was filed by the respondent in this appeal seeking past maintenance from the appellant.
- 3.The pleadings in O.P No.818/2013 are identified and a brief discussion relevant for the purpose is made hereunder. The parties to this appeal are referred to hereinafter as the petitioner and the respondent in tune with their original status in the respective original petition.
- 4.The respondent married the petitioner on 7.11.1976 at Thayineri Juma-ath, Payyannur. A girl child was born in the said wedlock

and she is now aged 35 years. The initial days of marriage was peaceful and comfortable. As days passed, respondent began to torture the petitioner and after the delivery of the child, he deserted her. Thereafter, the petitioner and her daughter lived at the mercy of some of their relatives. Her efforts for reunion did not materialise. The respondent was affluent with satisfactory financial backing. The petitioner was suffering from various ailments and has no income of her own.

5.Amidst the crisis the petitioner has come up with O.P No.818/2013 seeking past maintenance for a period from 30.07.2010 till 30.07.2013.

6.The respondent in his counter has denied the averments categorically and contended specifically as follows:- The petitioner was married earlier to one Ibrahim and after deserting him that she married the respondent in the year 1976. After one year of the marriage, she deserted the respondent. There was no marital relationship between the petitioner and the respondent for the last more than 35 years. The respondent is having assets and

properties and in order to pressurize him to part with those, the petition is filed. The application seeking maintenance is filed with the sole malafide intention to put the respondent, who is now aged 63 years and suffering from various ailments, to difficulties.

7.The learned Judge, Family Court, Kannur appreciated and evaluated the evidence let in by the petitioner which consists of her own testimony and Ext.A1 and the evidence of respondent consists of his own testimony as R.W.1 and Ext.B1 and heard counsel representing the parties. O.P No.818/2013 was allowed and the respondent was directed to pay past maintenance to the petitioner at the rate of Rs.3,000/- (Rupees Three Thousand only) per month for a period from 30.07.2010 till 30.07.2013.

8.The judgment by virtue of which past maintenance was allowed is assailed in this Mat. Appeal by the respondent on the ground that it is illegal, arbitrary and will not sustain in the eye of law. According to the respondent, it was the petitioner who has deserted him 35 years back without sufficient cause and that, it is highly malafide on the part of the petitioner to claim the relief of

maintenance from the respondent since the marital relationship with him has come to an end 35 years back. It is contended that the respondent's ailment and his inability to do any work is also a crucial aspect to be considered by the Family Court while disposing off an application seeking maintenance. According to the learned counsel had the Family Court judge adverted to these aspects, the impugned judgment would not have been the outcome.

9.Sri.T.R.Ravi, the learned counsel for the petitioner and Sri.M.V.Amaresan, the learned counsel representing the respondent were heard. The evidence on record is appreciated.

10.O.P No.818/2013 is filed under Section 7(f) of the Family Courts Act for realization of a sum of Rs.3,60,000/- being the past maintenance for the period from 30.07.2010 till 30.07.2013.

11.The factum of marriage and the desertion are not disputed by either parties. Petitioner has given testimony before the Family Court to the effect that her stay with the petitioner at the matrimonial home lasted only for one year and after the birth of

the child on account of physical and mental torture by the petitioner, she was constrained to quit. This was stoutly denied by the respondent. According to him he had not thrown the petitioner from the matrimonial home but the latter left his company on her volition and will. But, it is pertinent to note from the evidence brought in that the respondent has never taken any efforts to get the petitioner back to the matrimonial home. He has not even pursued with the legal remedy available to him under Section 9 of the Family Courts Act to get his conjugal rights restored. On the contrary, it is evidenced from the version of R.W.1 that he had remarried and is leading a marital life with another lady. These material aspects would probabilise the case of the petitioner that she was constrained to leave the matrimonial home based on the ill treatment of the respondent.

12.The point secondly to which our attention is drawn by the respondent's counsel is that the claim for maintenance being made much belatedly after a lapse of almost 35 years is vitiated by malafides. In this connection, it is pertinent to notice that the

husband in a marital bondage has the pious obligation to maintain his wife and a father has the very same obligation to maintain his daughter. Here, the factum of marriage and the birth of the daughter in that marriage are not matters under dispute. Under the Statute even an illegitimate child is entitled to claim maintenance. Evidence was let in by the petitioner to the effect that herself and the daughter were left to live without any maintenance being provided to her and she survived after the desertion by the respondent at the mercy of her relatives. Her daughter was sent in marriage with the financial support of her brother. Eventhough she was successful in living, educating her daughter and getting her married away, ailments started haunting her. Ext.A1 medical document is testimonial of her version in the box that she had been availing medical treatment for various diseases.

13.Petitioner's version in the box that she has no job or independent income is conceded by the respondent. This would probabalise her testimony that she somehow survived

circumventing all her crisis after getting deserted by the respondent at the mercy of others and only when her physical condition deteriorated due to various ailments money has become inevitable that she approached the court filing petition seeking maintenance. She might have felt it appropriate at that juncture to get her legitimate share of maintenance from the respondent who is legally obliged to pay the same. Time limit has not been fixed by law for pursuing with such a remedy. These circumstances avoid lending support to the argument advanced by the counsel for the respondent that malafide intention was there behind the belated claim for past maintenance.

14.The court below had also considered the evidence let in by the respondent that he was aged and affected with ailments. Ext.B1 is a medical document produced by the counsel for the respondent, supportive of his arguments. The veracity of Ext.B1 was challenged by the petitioner contending that it do not contain the identification marks of the respondent. The learned Family Court Judge doubted the veracity of Ext.B1 accepting the

contention of the petitioner. Eventhough the respondent has stated in cross examination before the court that he was aged 63 years, the age as revealed from Ext.B1 is 59 years. Authentic document in proof of age is not forthcoming. The disease noted in Ext.B1 is Osteoarthritis, which is a problem associated with old age and possibilities are common for a person after the age of 50 years to be affected with such a deformity. But, that has nothing to do with his financial capacity. Admittedly of R.W.1, he has married thrice. Being a Muslim, the personal law permits him to have four wives at the very same time provided he would have the financial capacity to maintain all of them equally. From the admitted fact that he has married thrice, his financial stability and soundness to maintain all of them can be presumed. The factum of illness is immaterial when there is ample evidence to the effect that the respondent is obliged morally and legally to maintain the petitioners, who are none other than the legally wedded wife and daughter of the petitioner and has the financial capacity to maintain them. Apart from all the above, the petitioner has also

succeeded in eliciting while cross examining the respondent that a building with 9 rooms is available with him. It is the obligation of a husband to meet the requirements of a wife as to shelter, food, clothing, treatment and the criteria to be looked into by the courts dealing with claims of maintenance is to see whether the husband against whom such a claim is made by the wife has the financial capacity. In the case on hand, the evidence available is satisfactory with respect to the eligibility of the wife to be maintained and the capacity of the husband to maintain her.

15.The learned Judge, Family Court, Kannur has considered all these aspects while passing the impugned judgment. The learned judge has found the petitioner eligible for Rs.3,000/- per month as past maintenance for a period from 30.07.2010 till 30.07.2013. The cost of living in the present scenario is very high and with the amount ordered by the impugned judgment, it is difficult to survive. However, the petitioner is not before us in challenge.

16.The grounds raised by the respondent as basis for interfering

with the judgment of the Family Court Judge are totally untenable and unsustainable. The amount of maintenance ordered to be paid to the petitioner by the impugned judgment if interfered with would be prejudicial to the petitioner and that would help to wipe out injustice. In the circumstances we are declined to interfere with the impugned judgment.

17.In the result, the appeal fails and stands dismissed. The impugned judgment of the Family Court, Kannur stands confirmed.

Sd/-
C.K.ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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