

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

Mat.Appeal.No. 687 of 2015 ()

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AGAINST THE JUDGMENT DATED 25-04-2015 IN OP 376/2013 of
FAMILY COURT, OTTAPPALAM**

APPELLANT/RESPONDENT:

**MOIDUTTY,
AGED 62 YEARS, S/O. KUNHAYAMU KURUKKAL,
VEETTIKKAD, PULAHARAKKAL HOUSE,
THEKKUMMURI (PO), KARALMANNA (VIA)
OTTAPALAM TALUK**

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

RESPONDENT/PETITIONER:

**KADEEJA, AGED 56 YEARS
D/O. LATE MOIDUNNI, MANEECHITHODIYIL
KOTHAKURUSSI AMSOM AND DESOM
OTTAPALAM TALUK PIN 679 501**

BY ADV. SRI.K.RAVI (PARIYARATH)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**C.K. ABDUL REHIM, J.
&
ALEXANDER THOMAS, J.**

Mat. Appeal No. 687 OF 2015

DATED THIS THE 22nd DAY OF DECEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

This matrimonial appeal is instituted against judgment of the Family Court, Ottapalam in OP No.376/2013, dated 25-04-2015. The appellant herein is the respondent and the respondent herein is the petitioner before the court below.

2. Marriage between the appellant and the respondent was solemnized about 43 years back and 4 children were born out of their wedlock. The appellant was employed at Gulf countries for 22 years. The parties are now living separated due to matrimonial discord. The respondent is now residing with her brothers. The appellant had re-married and is residing in the house constructed by him along with the second wife. Earlier the respondent had filed OS No.372/2004 before the Munsiff's Court, Ottapalam for getting maintenance. That suit was decreed in the year

2005 by allowing monthly maintenance to the respondent @ Rs.700/-. That decree was executed by filing E.P. No.249/2006. At that time the appellant filed MC No.800/2006 before the Family Court, Palakkad against his 4 children seeking maintenance, which was ultimately dismissed by the Family Court. In execution of decree in OS No.372/2004, certain immovable properties belonging to the appellant was put in auction. According to the respondent the appellant had himself purchased the property in auction in the name of the brother of his second wife and an amount of Rs.40,000/- alone was received by the respondent. The appellant had failed to pay any further amount, is the allegation. The appeal filed by the appellant against the decree was also dismissed. The respondent filed the original petition before the Family Court claiming that the amount of Rs.700/- awarded through the decree in OS No.372/2004 is not sufficient for her maintenance. It is alleged that the appellant is working as a builder and he has got huge Bank balance in his name, since he was employed

in Gulf for the last 22 years. It is also contended that he had purchased a property and constructed a house and is now residing therein along with his second wife. Further it is alleged that, he is getting an income of Rs.15,000/- per month from his tailoring business and also getting Rs.20,000/- from other businesses. Hence the respondent sought for enhancement of the maintenance to Rs.4,000/- per month.

3. The appellant herein contested the case by refuting the allegation that he is doing tailoring business and contending that he has no income as stated in the petition. It is contended that the respondent had left the matrimonial home without any reasonable cause and she is now residing along with her children. It is also stated that the son of the respondent is employed in a Gulf country and is sending huge amounts to the respondent. It is also alleged that the appellant is suffering from various diseases.

4. While adjudicating the case the court below found that the appellant had married another lady and is residing

with her. It is noticed that, despite the decree in OS No.372/2004, the respondent could realize only an amount of Rs.40,000/- in execution and that the appellant has not paid any amount, despite pendency of a subsequent execution application filed as EP No.202/2008. It is also noticed that appeal filed by the appellant against the decree was dismissed. Taking note of the fact that the cost of living had considerably increased and that 7 years have lapsed since the decree in OS No.372/2004, it is observed that the amount need to be enhanced. Further, the court below observed that, the respondent is suffering from various ailments and she had got admitted in a Hospital and undergone a surgery. The court below found that, huge amount is required for her treatment. It is found that the appellant has his own property and he is having tailoring business and other businesses. After taking note of the various documents produced on either side, the court below had arrived at a conclusion that the amount of maintenance ordered in OS No.372/2004 requires to be enhanced.

Considering the materials available, the court below found that an amount of Rs.2,500/- will be just and reasonable amount of maintenance which can be directed to be paid by the appellant. It is aggrieved by the said judgment the above appeal is filed.

5. Contention of the appellant is mainly on the aspect that there is no clear proof adduced before the court below regarding his income. Further it is contended that the respondent is being maintained by her children who are well settled. It is also pointed out that the court below had failed to take note of the fact that the appellant is an aged person and is suffering from various ailments. Per contra, learned counsel for the respondent contended that the court below had arrived at the conclusions regarding means of the appellant, after taking note of the materials available. It is only on the basis of the finding that the respondent requires a minimum amount of Rs.2,500/- for her existence, the amount of maintenance ordered earlier was enhanced. It is pointed out that this appeal is filed only on the basis of

a vengeance attitude maintained against the respondent, because of the fact that she had left his company and is living separated. According to learned counsel for the respondent, the appellant is now living settled with his second wife and is able to maintain the respondent out of the income derived by him from the business activities.

6. Having considered the rival contentions, we are of the opinion that the findings of the court below are well founded on factual circumstances and materials available on record. The appellant had not succeeded in proving that the respondent has got sufficient means to maintain herself. Despite stiff contest, the court below had taken note of the fact that there is evidence to the effect that the appellant has got sufficient means for providing maintenance to the respondent. It is to be noticed that maintenance is a matter of obligation on the part of the husband. As long as he has got means to maintain himself he is not expected to deny maintenance to his wife on the basis of any contention that there is no sufficient income. In the case at hand the court

below has ordered only a meager amount of Rs.2,500/- per month towards maintenance of the respondent. There is no error in appreciation of the evidence on record or there is no manifest illegality or impropriety in the judgment passed awarding maintenance @ Rs.2,500/-. We are not satisfied that there exists any legally sustainable ground warranting interference to reverse the findings.

Consequently the appeal fails and the same is hereby dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

ALEXANDER THOMAS, JUDGE.

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True copy

P.A. to Judge