

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

Mat.Appeal.No.1163 of 2015 ()

AGAINST THE ORDER IN OP 377/2010 of FAMILY COURT,
KOTTARAKKARA, DATED 30.06.2014

APPELLANT(S)/RESPONDENTS:

1. THAMBU KUNJU,
S/O. GEORGEKUTTY, EBENEZER BHAVAN,
THAZHATHU VADAKKU MURI, PATTAZHI VADAKKEKARA VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.

2. GEORGEKUTTY, AGED 60 YEARS,
S/O.YOHANNAN, EBENEZER BHAVAN, THAZHATHU VADAKKU MURI,
PATTAZHI VADAKKEKARA VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENT(S)/PETITIONERS:

1. NISHA THOMAS,
D/O. THOMAS, KANKEELAZHIKATHU VEEDU, THEKKUMPURAM MURI,
PUTHOOR VILLAGE, KOTTARAKARA TALUK, KOLLAM DISTRICT.

2. FEBBA THAMBU
D/O. THAMBUKUNJU, KANKEELAZHIKATHU VEEDU,
THEKKUMPURAM MURI, PUTHOOR VILLAGE, KOTTARAKARA TALUK,
KOLLAM DISTRICT (MINOR REPRESENTED BY
THE 1ST RESPONDENT/MOTHER)

R1 & 2 BY ADV.SMT.SONIYA.M

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SS

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

Mat.Appeal No.1163 of 2015

Dated this the 30th day of November, 2015

ORDER

K. Ramakrishnan, J.

Respondents in O.P.No.377/2010 on the file of the Family Court, Kottarakkara, are the appellants herein. The respondents herein are the divorced wife and daughter of the first appellant and the 2nd appellant is the father of the first appellant. The respondents filed the above petition before the court below for return of money which was paid at the time of marriage to the tune of ₹1,50,000/- and also the value of the jeep namely ₹3,44,000/- and also for past and future maintenance at the rate of ₹2,000/- and ₹1,500/- respectively for the respondents. Earlier since the appellants did not appear, the matter was decided exparte and an exparte decree was passed and the petitioners filed an application to set aside the exparte decree and that was allowed on payment of cost of ₹2,000/-. Thereafter

according to the appellants, the court below insisted for payment of interim maintenance said to have been passed as a condition for participating in the trial. Though the counsel for the appellants appeared and submitted before the court below that no such order has been passed, court below was not willing to allow the appellants to participate in the trial and accordingly again the appellants were set *exparte* and an *exparte* decree has been passed, which is being challenged by the appellants by filing this petition.

2. Since the respondents appeared through counsel and also considering the nature of dispute in the case we felt that the appeal can be admitted and disposed of today itself after hearing both sides.

3. The counsel for the appellants submitted that there was no interim order of maintenance passed by the family court, which they are bound to pay before participating in the trial and already an application has been filed before the family court under Section 125 of the

Code of Criminal Procedure and maintenance was ordered. So they are not entitled to get maintenance.

4. On the other hand, learned counsel appearing for the respondent submitted that, the first respondent had in the proof affidavit relinquished the claim for maintenance and she wanted only return of the amount claimed and also maintenance of the minor child alone.

5. It is an admitted fact that the first appellant married the first respondent and the 2nd respondent was born to them in that wedlock. It is also an admitted fact that the marriage between the first appellant and first respondent was dissolved. It is also in away admitted that earlier the appellants were set exparte and the exparte decree was set aside on payment of cost of ₹2,000/- and the cost was paid and the application was allowed. Though there is an averment in the appeal memorandum that the court below had insisted the appellants to pay interim maintenance ordered as a condition for participating in the

proceedings, on going through the order, no such direction was seen given and it is seen from the order that subsequent to setting aside the exparte order also, since they did not appear, they were set exparte and the exparte decree was passed. However it is true that the petitioners have got a right to file an application for setting aside the exparte decree again, but that will only delay the proceedings. Considering the circumstances we feel that exparte decree can be set aside on condition of the first appellant, depositing the the arrears of maintenance due to the 2nd respondent at the rate fixed by the court below as on today within a period of six weeks as a condition for setting aside the exparte decree. If that amount is deposited, then court below is directed to set aside the exparte decree and allow the parties to participate in the proceedings and dispose of the case on merit.

With the above condition and direction, the appeal is allowed and remitted to the court below for fresh disposal

as directed. If the amount is not deposited as directed by this court within the time specified, then the exparte order passed by the court below will stand revived. Considering the fact that the case is of the year, 2010, court below is directed to take all endeavor to dispose of the case as expeditiously as possible at any rate within three months from the date on which the exparte decree will be set aside by the court below, after complying with the direction of this court. The amount if any deposited as directed is permitted to be withdrawn by the first respondent for and on behalf of the 2nd respondent and this can be later adjusted in the amount if any to be passed later while disposing the case on merit towards the maintenance to be payable to the 2nd respondent.

Sd/-

C.K. ABDUL REHIM, JUDGE

Sd/-

K. RAMAKRISHNAN, JUDGE

//True Copy//

P.A. to Judge