

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 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Mat.Appeal.No. 274 of 2014 ()

AGAINST THE ORDER IN OP 997/2008 of FAMILY COURT, NEDUMANGAD

APPELLANT/PETITIONER:

SATHEESAN, AGED 50 YEARS,
S/O. SIVADASAN, DAMAYANTHI VEEDU, ELAKAMON P.O.
AYIROOR VILLAGE, VARKALA, THIRUVANANTHAPURAM.

BY ADVS.SRI.SHAMMI VIJAYAN
SMT.K.P.SANTHI

RESPONDENTS/RESPONDENTS:

1. LATHIKAKUMARI,
D/O RAJAMMA, RESIDING AT AMBIKA VILASOM, ELAKAMON P.O.
AYIROOR VILLAGE, VARKALA, THIRUVANANTHAPURAM.

2. PRUDHA, AGED 23 YEARS,
D/O. LATHIKAKUMARI, RESIDING AT AMBIKA VILASOM,
ELAKAMON P.O., AYIROOR VILLAGE, VARKALA
THIRUVANANTHAPURAM.

3. PRADHYAM, AGED 18 YEARS,
S/O. LATHIKAKUMARI, RESIDING AT AMBIKA VILASOM,
ELAKAMON P.O., AYIROOR VILLAGE, VARKALA
THIRUVANANTHAPURAM.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
10-07-2015 ALONG WITH MAT.A.NO.289/14, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
Mat.A.Nos.274 & 289 of 2014

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Dated this the 10th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

These two appeals were filed by the petitioner in IA.Nos.1005/2013 and 1006/13 in OP.No.997/2008 and I.A.Nos.1007/2013 and 1008 /13 in OP.No.1218/2009 on the file of the Family Court, Nedumangad respectively. O.P.No.997/2008 was filed by the wife and children of the petitioner against the petitioner seeking a decree for past maintenance and also for return of gold ornaments and other movables. O.P.No.1218/2009 was filed by the second respondent herein, who is the major daughter of the appellant, for a decree claiming future marriage expenses. In both these cases the appellant herein, who was the sole respondent, though appeared earlier did not file statement. So he was declared ex parte and court below had allowed OP.No.1218/2009 granting decree in favour of the respondent herein permitting to realise Rs.5 lakhs towards the marriage expenses from the appellant and O.P.No.997/2008 was allowed directing the appellant

herein to pay arrears of maintenance at the rate of Rs.6,000/- per month for three years totalling an amount of Rs.2,16,000/- and also granted a decree permitting the first petitioner in the lower court, who is the first respondent herein to realise Rs.3 lakhs being the value of 30 sovereigns of gold ornaments. The appellant filed I.A.No.1005/2013 to set aside ex parte decree along with I.A.No.1006/2013 to condone the delay in filing the application in OP.No.997/2008 and also filed a similar petition to set aside ex parte decree and to condone the delay as I.A.Nos.1007/2013 and 1008/2013 in OP.No.1218/2009 and both these applications were dismissed by the Family Court by a common order. The above common order is being challenged by the petitioner/appellant by filing these appeals and also challenging the ex parte decree passed by the court below as well. Since the point to be considered in both these appeals are same and also it was disposed of by a common order by the court below, we felt that both these appeals can be disposed of by a common judgment.

2. Heard counsel for the appellant and the respondents.

3. Though the respondents appeared through counsel in Mat.A.No.274/2014, the respondent in Mat.A.No.289/2014

remained absent in spite of service of notice on her.

4. Counsel for the appellant submitted that there was no willful laches on his part in not appearing and in fact he was arrested and kept in jail in connection with non payment of maintenance amount passed in a maintenance application filed by the respondents and that is the reason why he did not appear and contest the case. This was objected by the counsel for the respondents.

5. We have gone through the order passed by the court below in dismissing the applications. It is true that there was some laches on the part of the appellant in not appearing before the court below to contest the case on merits. But it cannot be said that the laches was deliberate so as to prolong the matter.

6. It is settled law that if there is some reason stated for non appearance of the parties and if the court is satisfied with that reasons, the court must allow the application for setting aside the ex parte decree by granting the parties an opportunity to meet the case on merits. Even if the court felt that there was some inconvenience caused to the other side on account of the laches, then court should allow those

applications on payment of cost as compensation for the inconvenience caused to the other side. Considering the relationship between the parties and also the point of dispute to be decided, the court below ought to have given an opportunity to the appellant to meet the case on merits by allowing the application on payment of certain amount as costs. In Mat.A.No.274/2014 huge amount is in arrears towards maintenance. So under the circumstances, we feel that the order passed by the court below dismissing the application to set aside the ex parte decree can be allowed on depositing Rs.50,000/- towards arrears of maintenance within two months and also to pay interim maintenance to the wife at the rate of Rs.2,000/- per month from today. If the arrears of maintenance is deposited within that time, then the court below is directed to set aside the ex parte decree passed and grant time to the appellant to file objection and then dispose of the case on merits in accordance with law.

7. As regards Mat.A.No.289/2014 is concerned, the case was filed for future marriage expenses, which has to be considered by the court below after giving parties an opportunity to adduce evidence. So, we feel that the application

to set aside ex parte decree can be allowed on condition of the petitioner paying Rs.5,000/- as cost to the counsel for the respondent in the lower court within two months from today. If the cost is paid and proof of payment of cost is produced before the court below, then the court below is directed to set aside the ex parte decree and give an opportunity to the appellant to file objection and then dispose of the case in accordance with law on merits.

8. So the appeals are allowed on the following conditions:

Mat.A.No.274/2014 is allowed on condition that the appellant shall deposit Rs.50,000/- towards arrears of maintenance ordered within two months from today. If the appellant deposits the amount before the court below within that time, then the lower court is directed to set aside the ex parte decree and give an opportunity to the appellant to file objection and then dispose of the case on merit. The appellant is also directed to pay interim maintenance to the 1st respondent - wife at the rate of Rs.2,000/- per month from today till the disposal of the case in the lower court.

Mat.A.No.289/2014 is allowed on condition that the

appellant shall pay a cost of Rs.5,000/- to the counsel for the respondent in the lower court within two months from today. If the amount is deposited within the time mentioned above, the lower court is directed to set aside the ex parte decree and give an opportunity to the appellant to file objection and then dispose of the case on merit in accordance with law. If the maintenance amount and also the cost is not paid as directed, then ex parte decree passed by the court below will stand revived. If any amount is deposited towards arrears of maintenance, then the first petitioner in the lower court is permitted to withdraw the same and that will be adjusted later towards the amount of past maintenance to be awarded on merits.

With the above directions and observations, both these appeals are allowed and disposed of accordingly.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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