

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Mat.Appeal.No. 138 of 2010 ()

AGAINST THE JUDGMENT IN OP 915/2009 of FAMILY COURT,
KOZHIKODE DATED 30-11-2009

APPELLANT(S) /PETITIONER:

KRISHNAN VENKITESWARAN
R/AT A-602, SHAH COMPLEX-4, SECTOR-14
SAMPADA, NAVI MUMBAI-400 705, THANE DISTRICT.

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.ANJU P.NAIR

RESPONDENT(S) /RESPONDENT :

SMITHA KRISHNAN,
D/O.T.G.SUBRAMANIAN,
BIJILY HOUSE, P.O.MALAPARAMB, KOZHIKODE
(CHEVAYUR PSL) .

BY ADV. SRI.V.N.RAMESAN NAMBISAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
05-02-2015, ALONG WITH RPFC. 62/2010, RPFC. 203/2010,
Tr.P.C.57/2010, CRA. 285/2013, CRMC. 517/2013, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

ami/

V.K.MOHANAN & K.HARILAL, JJ.

**Mat.Appeal No.138/10, R.P.(F.C.)Nos.62/10, 203/10,
Tr.P.(C) No.57/10, Crl.A.No.285/13 and
Crl.M.C.No.517/13**

Dated this the 5th day of February, 2015.

J U D G M E N T

Mohanana, J.

The above referred matters are arising out of series of litigations initiated by one Mr.Krishnan Venkiteswaran and one Mrs.Smitha Krishnan, who are husband and wife. Due to strained relationship between the spouses, several litigations and proceedings were initiated by them before the court below and also before this Court and we will now refer those proceedings.

2. The husband approached the Family court, Kozhikode by filing O.P.No.915/09 under section 13(1)(ia) of the Hindu Marriage Act for divorce on the ground of cruelty, against his wife Smitha Krishnan. The wife has filed M.C.No.85/09 before the Family court, Kozhikode, for

getting maintenance and O.P.No.125/09 for an order for restitution of conjugal rights from the very same Family court and the said original petition is pending before the Family court. Whereas, O.P.No.915/09 and M.C.No.85/09 were disposed of by a common judgment dated 30.11.2009, whereby the learned Judge of the Family court declined the relief sought for by the husband for divorce and M.C. was allowed directing the husband to pay Rs.4,000/- and Rs.1,500/- respectively to the first and second claimant therein as monthly maintenance allowance from 19.3.2009 onwards. Against the above common judgment in O.P.No.915/09, the petitioner/husband preferred Mat.A.No.138/10. The petitioner has also filed R.P.(F.C.)No.62/10 challenging the order granting maintenance to the wife as per the very same common judgment in M.C.No.85/09. Dissatisfied with the quantum of maintenance fixed by the court

below, the respondent/wife and the son preferred R.P. (F.C.)No.203/10 before this Court. Besides the above civil litigations between the parties, the respondent/wife filed a private complaint against the petitioner/husband, husband's brother and father, upon which cognizance was taken by the court below and instituted C.C.No.1127/12 pending on the file of court of Judicial First class Magistrate-IV, Kozhikode. The accused therein preferred CrI.M.C.No.517/13 with a prayer to quash the above proceedings. It appears that the brother of the husband one Mani Venkiteswaran @ Santhosh preferred a private complaint against the respondent herein for defamation, upon which cognizance was taken and instituted C.C.No.603/10 in the court of Judicial First Class Magistrate-I, Kozhikode. However, the learned Magistrate had disposed of the above calendar case by acquitting the accused therein, by judgment dated 22.5.2012. Against

the above order of the learned Magistrate, the complainant therein preferred an appeal before this Court as Crl.A.No.285/13. While the matters were pending, the petitioner/husband preferred Tr.P.(C)No.57/10 before this Court with a prayer to transfer O.P.No.125/09 from the Family court, Kozhikode, to the Family court at Kannur/Thrissur, which is a case instituted at the instance of the respondent/wife for restitution of conjugal rights.

3. Earlier, on two occasions, though the parties sat together for mediation, the same resulted in vain and subsequently while the matters were pending, we directed the parties to sit together in our presence to find out the possibility for an amicable settlement of all the disputes subsist between them. Thus, in the presence of their counsel and the learned Government Pleader and through our intervention, the entire matters have been settled and consequently a joint affidavit was signed by both the

husband and wife and a compromise petition dated 2.2.2015 was also filed, signed by the contesting parties and counter signed by the respective counsel. We have carefully perused the joint affidavit and the compromise petition filed by the parties. We are satisfied with the terms and conditions incorporated in the compromise petition. Since the parties to the dispute have come forward to settle the matter amicably and a compromise petition and a joint affidavit are signed by both the husband and wife, which are counter signed by the respective counsel, we are of the view that, such settlement should be approved and encouraged and thus, the compromise petition and the affidavit form part of this judgment. In the light of the settlement arrived, there is no surviving grievance for either of the contesting parties to the lis. So, we are inclined to dispose the above referred matters together.

4. Both the parties and the counsel representing them have submitted that the husband has paid a sum of Rs.16,50,000/- to the wife vide D.D.No.029551 dated 30.1.2015 drawn on State Bank of India, payable at Calicut Government Medical College Branch and as such, the most important condition towards the compromise proposal is complied with. In the joint affidavit filed by them, it is requested to record the compromise entered between the parties and to grant decree for divorce as prayed for. In view of the facts referred above, it can be seen that the relationship between the parties strained much earlier and they were legally fighting each other which culminated with the proceedings before this Court. Now, as recorded above, the parties have settled the entire disputes. If that be so, we are of the view that, Mat.A.No.138/10 can be allowed granting divorce in terms of the prayer in O.P.No.915/09 of the Family court,

Kozhikode. In a recent decision reported in **Smt.Prachi Singh Patil Vs. Sri.Rahul G Patil (2015(1)Supreme 96)**, the Honourable Apex Court has observed and held that, the parties pursuing divorce case and trying an amicable solution and after 6 years of efforts, when parties reach an amicable settlement to dissolve their marriage, it should be accepted. Following the above decision, we are of the view that, accepting the settlement arrived between the parties, the divorce as sought for can be granted.

In the result, Mat.Appeal No.138/10 is allowed, setting aside the judgment dated 30.11.2009 in O.P.No.915/09 of Family court, Kozhikode, and the said original petition is allowed dissolving the marriage solemnised between the petitioner and respondent on 29.5.2006 at Thali Brahmana Samootha Mandapam at Kozhikode and a decree will be followed accordingly.

In view of the terms agreed by the parties as evident from paragraph 3 of the compromise petition, Crl.M.C.No.517/13 is allowed quashing all the proceedings pursuant to C.C.No.1127/12 pending on the file of court of Judicial First Class Magistrate-IV, Kozhikode.

Though the appellant in Crl.A.No.285/13 is not a party to the compromise, the learned counsel appearing for the appellant, pursuant to the compromise arrived between the parties and as instructed by the appellant herein, made an endorsement to the effect that he is not pressing the said appeal. The above endorsement is recorded. Accordingly, Crl.A.No.285/13 stands dismissed as not pressed.

In view of the terms contained in paragraph 3 of the compromise petition, R.P.(F.C.)Nos.62/10 and 203/10 are dismissed.

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As the parties to the dispute have not expressed any objection in dismissing O.P.No.125/09 pending before the Family court, Kozhikode, filed by the wife for restitution of conjugal rights, it stands dismissed.

As O.P.No.125/09 is dismissed, no further order is warranted in Tr.P.(C)No.57/10 and accordingly, the same also stands dismissed.

Accordingly, all the above matters are disposed of.

Sd/-
V.K.MOHANAN,
Judge.

Sd/-
K.HARILAL,
Judge.

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P.A.to Judge