

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Mat.Appeal.No. 1138 of 2014 (F)

AGAINST THE ORDER DATED 14.10.2014 IN I.A.NO.954/2013 AND I.A.NO.955/13
IN O.P.NO.574/2012 BEFORE THE FAMILY COURT, KANNUR.

APPELLANT/PETITIONER/RESPONDENT:

V.V ANANDAKRISHNAN, AGED 50 YEARS
S/O.GOVINDAN, RESIDING AT KOSORMOOLA, NADAL PO
EDAKKAD, KANNUR

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT/RESPONDENT/PETITIONER:

V. BINDU, AGED 38 YEARS,
D/O.KANNAN, KANDANKALI, PAYYANNUR AMSOM
KANDANKALI DESOM, PAYYANNUR VILLAGE,
KANNUR DISTRICT, PO PAYYANNUR 670 307.

BY ADV. SRI.O.V.MANIPRASAD

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
20.03.2015, ALONG WITH RPFC. 17/2014 AND MA. 11/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

I.A.NO.3901/2014 IN M.A.NO.1138/2014

DISMISSED

SD/- **K.T.SANKARAN, JUDGE**

20/03/2015

SD/- **K. HARILAL, JUDGE**

//TRUE COPY//

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K.T.SANKARAN & K.HARILAL, JJ.

Mat. Appeal No.1138 of 2014(F),

Mat. Appeal No. 11 of 2015 (B) &

R.P.(F.C.) No.17 of 2014

Dated this the 20th day of March, 2015

JUDGMENT

K.T.Sankaran, J.

In all the three cases, parties are the same and the matters are connected. Therefore, all the three cases are being disposed of by this common judgment. Hereinafter the parties are referred to as husband and wife.

2. The wife filed O.P.No.574 of 2012 on the file of the Family Court, Kannur against her husband claiming a sum of ₹4,70,000/-, the amount consisting of ₹2,00,000/- given as loan and ₹2,70,000/- being the value of gold ornaments given at the time of marriage and which was allegedly misappropriated by the husband. On 29.12.2012, an exparte decree was passed against the husband. The husband filed an application to set aside the exparte decree

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along with an application for condonation of the delay of ten months and twenty five days. The court below dismissed the application for condonation of delay and the application to set aside the exparte decree, against which, Mat. Appeal No.1138 of 2014 was filed by the husband.

3. The wife filed O.P.No.115 of 2011 claiming past maintenance for seven months. In that case also, the husband was set exparte and the Family Court passed an order granting past maintenance for seven months at the rate of ₹2,000/- per month. That exparte decree was set aside and the delay was condoned on the application filed by the husband, on condition of payment of costs of ₹1,000/-. He did not pay the costs and, therefore, the applications were dismissed. The husband filed another application for restoration of the application for setting aside the exparte decree. There also, there was delay. He also filed an application for condoning the delay in filing the restoration application. The Family Court dismissed both the applications, against which Mat. Appeal No.11 of 2015 was filed by the husband.

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4. The wife filed M.C.No.111 of 2011 claiming maintenance to her at the rate of ₹5,000/- per month. The Family Court disposed of the maintenance case and awarded ₹2,250/- per month to the wife. That order was an exparte order. Against that exparte order, the husband filed R.P.(F.C.) No.17 of 2014. Though the husband was set exparte in M.C.No.111 of 2011, the court below considered the contention raised by the husband regarding his income and fixed the maintenance amount at the rate of ₹2,250/- per month.

5. In M.C.No.111 of 2011 filed by the wife claiming past maintenance, the husband raised a contention that though he is a carpenter by profession he is getting only ₹250/- per day. The court below found that the evidence of the wife shows that she is unable to maintain herself and that the husband is a man of sufficient means. Even if the contention of the husband is taken as true, he gets ₹250/- per day. Therefore, the award of maintenance at the rate of ₹2,250/- per month cannot be said to be excessive. As stated earlier, the contention of the husband is that he is getting only ₹250/- per day as wages. It is common knowledge that a carpenter in Kerala would not be available for such a meager sum as daily

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wages. The court below was justified in awarding maintenance to the wife at the rate of ₹2,250/- per month and we do not find any ground to interfere with the order passed by the court below, in spite of the fact that it was an exparte order. Therefore, R.P.(F.C.) No.17 of 2014 is dismissed.

6. As regards the claim for past maintenance in O.P.No.115 of 2011, maintenance was awarded at the rate of ₹2,000/- per month. In that case, the husband filed an application to set aside the exparte decree with a petition for condonation of delay. The Family Court allowed those applications on condition of payment of costs of ₹1,000/-. The husband did not pay the costs. Therefore, those applications were dismissed. The husband filed a restoration application and that too with a petition for condonation of delay. The court below rightly dismissed those applications. Past maintenance was claimed only for seven months. Past maintenance per month was awarded at a reasonable amount of ₹2,000/-. We do not find any ground to interfere with the order passed by the court below, which is under challenge in Mat. Appeal No.11 of 2015. Accordingly, Mat. Appeal No.11 of 2015 is dismissed.

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7. What remains is Mat. Appeal No.1138 of 2014. As stated earlier, the claim made by the wife was for a sum of ₹4,70,000/- and the court below passed an exparte decree on 29.12.2012. The husband filed an application to set aside the exparte decree and a petition to condone the delay of ten months and twenty five days, which were dismissed by the court below. Challenging that order, the husband has filed Mat. Appeal No.1138 of 2014. In the application for condonation of delay, the contention of the husband was that on the date on which the case was posted for hearing, he was laid up due to viral fever and back pain. The husband was set exparte on 28.12.2012 and the exparte final order was passed on 29.12.2012. Even on earlier occasions, the husband was absent before Court. On 26.11.2012, he sought for adjournment and the Court awarded costs of ₹300/- to the wife. Still, he remained absent thereafter. The case put forward by the husband that he was suffering from back pain and viral fever is falsified by the application submitted by him before the Taluk Legal Services Authority on 28.12.2012, the date on which the case was posted before the Family Court and on which date he was set exparte. On these grounds, the court below dismissed the applications.

8. It is true that the husband did not fully establish the reason for condonation of delay. He even stated falsehood. But the fact remains that the decree passed by the court below for a sum of ₹ 4,70,000/- was an ex parte decree. The husband did not get an opportunity to adduce evidence. It is submitted that there is no document evidencing the payment of a loan of Rupees two lakhs. The case of the wife that the ornaments were appropriated by the husband is also a matter which was disputed and, therefore, necessarily to be proved by the wife. All these are matters which could be considered on both parties adducing evidence. Of course, the husband failed to appear before Court. Still, we feel that an opportunity could be afforded to the husband to contest O.P.No.574 of 2012 provided he complies with certain conditions.

9. The learned counsel appearing for the wife submitted that in execution of the decree, E.P.No.28 of 2013 was filed by the decree holder and the property of the husband was brought to sale. At that juncture, the husband filed O.P.(F.C.) No.353 of 2014 for stay of the Execution Petition on the ground that his application for setting

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aside the exparte decree was pending. Likewise, the husband filed O.P.(F.C.) No.352 of 2014 with respect to the claim for past maintenance, stating that the execution proceedings may be stayed till the disposal of the application to set aside the exparte order for past maintenance. The learned counsel submitted that on 7.8.2014, in O.P.(F.C.)Nos.352 of 2014 and 353 of 2014, this Court directed the husband to pay the past maintenance and ₹10,000/- which was directed to be paid by this Court in R.P.(F.C.) No.17 of 2014 to the wife as a condition for stay. The husband failed to pay those amounts. Later, after Mat. Appeal Nos.1138 of 2014 and 11 of 2015 were filed, O.P.(F.C.) Nos.352 of 2014 and 353 of 2014 were dismissed as infructuous. The learned counsel submitted that the conduct of the husband shows that he was never inclined to pay any amount to the wife in spite of the orders passed by the Family Court as well as by this Court.

In these circumstances, we are inclined to impose a condition of deposit of Rupees one lakh towards the decree amount in O.P.No.574 of 2012 and payment of ₹5,000/- as costs to the wife as a condition for setting aside the exparte decree in O.P.No.574 of

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2012. Accordingly, the decree in O.P.No.574 of 2012 is set aside on condition that the husband shall deposit before the Family Court within two months from today a sum of Rupees one lakh. The husband shall also pay a sum of ₹5,000/- as costs to the wife within two months from today. If these conditions are complied with by the husband, the Family Court shall dispose of O.P.No.574 of 2012 on the merits, after affording an opportunity of being heard to both parties, but, of course, without permitting the husband to protract the case. If the husband fails to comply with any of the conditions mentioned above, the order passed by the court below shall stand revived and Mat. Appeal No.1138 of 2014 shall be treated as dismissed with costs.

(K.T.SANKARAN)
Judge

(K. HARILAL)
Judge

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