

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

OP (FC).No. 527 of 2015 (R)

(AGAINST THE ORDER DATED 18.5.2015 IN I.A.No.406/2015 IN
O.P.No.104/2014 ON THE FILES OF THE FAMILY COURT, NEDUMANGAD).

PETITIONER:

GODWIN Y.D. AGED 32 YEARS
S/O.M.YESUDAS, RESIDING AT BETHEL BHAVAN, KARAMOODU
VELLARADA P.O., NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.GOPAKUMAR R.THALIYAL
SRI.R.B.RAJESH

RESPONDENT:

APARNA JOHN, AGED 23 YEARS
D/O.JOHN LITTLE, PRAYER HOUSE, MANCHAMCODE
MANCHAMCODE P.O., NEYYATTINKARA TALUK
THIRUVANANTHAPURAM DISTRICT, PIN-695033.

R1 BY ADV. SRI.SUMAN CHAKRAVARTHY
R1 BY ADV. SMT.K.R.RIJA

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 14-
12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 527 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : COPY OF THE OP NO.104/2014 FILED BY THE PETITIONER BEFORE
THE FAMILY COURT, NEDUMANGAD DT.31-1-2014.

EXT.P2 : COPY OF THE AFFIDAVIT AND PETITION IN IA 406/2015 IN OP
104/2014 DT.27-2-2015.

EXT.P3 : COPY OF THE SALARY CERTIFICATE ISSUED TO THE PETITIONER.

EXT.P4 : COPY OF THE SETTLEMENT DEED DT.2-1-2012.

EXT.P5 : COPY OF THE ORDER PASSED BY THE FAMILY COURT, NEDUMANGAD IN
IA 406/2015 IN OP 104/2014 DT.18-5-2015.

EXT.P6 : COPY OF THE PERMIT GRANTED TO THE PETITIONER ON 27-10-2015.

EXT.P7 : COPY OF THE PERMIT ISSUED TO THE PETITIONER ON 29-10-2015.

EXT.P8 : COPY OF THE ORDER DT 31-10-2015 IN MP 767/2015 IN MVAA
NO.233/2015.

RESPONDENT'S EXHIBITS ; NIL

TRUE COPY

P.S TO JUDGE

AL/-

**C.K.ABDUL REHIM &
MARY JOSEPH, JJ.**

O.P.(F.C) No.527 of 2015

Dated this the 14th day of December, 2015

JUDGMENT

C.K.Abdul Rehim J.

The challenge raised in this Original Petition filed under Article 227 of the Constitution of India is against Ext.P5 order which is passed by the Family court, Nedumangad in I.A. No.406/2015 in O.P. No.104 of 2014. The petitioner had instituted O.P.No.104/2014 before the Family court, against the respondent herein, seeking restitution of conjugal rights. The respondent had filed a written statement and counter claim in the said case seeking realisation of an amount of Rs.8 lakh from the petitioner being the amount alleged to have been appropriated by the petitioner and marriage expenses and to recover movable properties and for getting maintenance at the rate of Rs.10,000/- per month along with alimony of Rs.1,50,000/-. After filing the written statement and counter claim, the respondent herein filed I.A.No.406/2015 seeking direction against the petitioner for payment of interim maintenance at the rate of Rs.10,000/- per month and Rs.1,25,000/- towards alimony and Rs.25,000/- towards litigation expenses. The court below considered I.A.No.406/2015 and passed the impugned order directing the petitioner

to pay interim maintenance at the rate of Rs.5,000/- per month from 27.2.2015 onwards and also directing payment of Rs.5,000/- each towards alimony and litigation expenses. It is aggrieved by the said order, the petitioner approached this court invoking supervisory jurisdiction.

2. In the impugned order, the Family Court found that the respondent herein is not having any employment or income, it is categorically found that under Section 36 of the Divorce Act 1869, she is entitled to get alimony and litigation expenses. Considering the circumstances, the court below ordered interim maintenance and payment of alimony and litigation expenses.

3. The contention of the petitioner is that the amounts were directed to be paid by the court below, without taking into consideration of the income of the petitioner and his financial status. It is also contended that the court below had failed to take into consideration of the fact that the respondent is a person having her own income out of the employment in various institutions and training of karate course and that she is having sufficient income derived from the immovable properties in her name. According to the petitioner, the impugned order is passed without taking into consideration of the contentions raised by the petitioner in this regard.

4. Evidently, the impugned order is passed after hearing the petitioner also, however, there is no evidence forthcoming to the effect that the

petitioner had filed any specific objections/counter in I.A.No.406/2015. Learned counsel for the petitioner had produced a copy of the objection filed by the petitioner against the counter claim. There it is revealed that vague allegations has been raised to the effect that the respondent is conducting karate classes at different places and she is having considerable income. The above aspect is strongly disputed by the learned counsel appearing for the respondent. It is also pointed out that the income certificate was produced on behalf of the petitioner, in order to show that she is having only meagre income deriving out of his job as Pastor in a church institution. Learned counsel for the respondent also dispute the genuineness of certificate produced by the petitioner.

5. While considering the rival contentions, this court take note of the fact that the petitioner had an obligation to pay the amount of alimony and litigation expenses by virtue of the statutory provisions contained in Section 36 of the Divorce Act 1869. Even though, the Family court has mentioned Section 37 of the said Act which provides the power on the court to direct monthly or weekly sums for maintenance and support of the wife, on a close perusal of the said provision, it is evident that such order can be issued only where a decree of dissolution of marriage or a decree of judicial separation or in a case seeking such relief is pending. Here, the case instituted by the petitioner is one seeking restitution of conjugal rights as well as it is doubtful as to whether the monthly maintenance can be directed to be paid under Section 37 of the Divorce

Act 1869. However, it is evident that in the counter claim filed by the respondent, maintenance at the rate of Rs.10,000/- per month is claimed even if such claim will not come within the purview of Divorce Act 1869 which can be considered as a suit claiming monthly maintenance from the husband. Being a suit claiming maintenance it is left open to the respondents to seek interim relief by way of interim monthly maintenance. Therefore, it cannot be said that the Family court is powerless in ordering interim maintenance in the suit instituted. However, it is evident that the petitioner has not filed any specific objection to the interim application, nor he could produce any documents in support of his contentions. In the interest of justice this Court is of the opinion that questions regarding payment of interim maintenance need to be decided by the court below based on rival contentions and taking into consideration, the circumstances with respect to the financial status of both the parties. Hence, we are of the opinion that the order to the extent it directed payment of monthly maintenance need reconsideration and fresh orders need be passed after affording an opportunity to both sides. But it is a fact to be remained that interim maintenance is a matter of utmost necessity and this Court is of the opinion that the respondent wife need to be given adequate protection with respect to her livelihood. Therefore, while intended to remand the matter on the limited premise of reconsideration of the direction for payment of monthly maintenance, we need to impose adequate condition on the petitioner to make payment on

condition.

6. Hence the above O.P is disposed of, on the following terms. The impugned order passed by the Family court in I.A. No. 406/2015 in O.P. 104/2014 is upheld to the extent it directs payment of Rs.5,000/- as alimony and its litigation expenses. With respect to the direction in payment of interim maintenance at the rate of Rs.5,000/- per month, the said direction will stand set aside. A reconsideration of I.A.No. 406/2015 and passing of interim orders in this regard is directed after affording an opportunity to the parties to adduce proper pleadings and evidence in the matter.

The court below will reconsider I.A. No.406/2015 to the limited extent directed as above, if the petitioner makes payment of the amount of alimony and litigation expenses along with a deposit of Rs.20,000/- towards interim maintenance within a period of one month from today. Needless to observe that the amount if deposited shall be permitted to be withdrawn by the respondent. On deposit of such amount, the Family Court shall pass fresh orders on the question of interim maintenance as directed above at the earliest at any rate within a period of one month thereafter.

Sd/-
C.K.Abdul Rehim, Judge

Sd/-
Mary Joseph, Judge

al/-

O.P.(F.C) No.527 of 2015

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True copy

P.S to Judge