

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

RPFC.No. 67 of 2012 ()

MC 340/2010 of FAMILY COURT, PALAKKAD

REVISION PETITIONER/COUNTER PETITIONER:

A.RAMASWAMY
S/O.ARUMUGHAN D.NO.160,
THOTTIPALAYAM SENKADU VELLAMADA P.O
COIMBATORE, TAMIL NADU

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT/PETITIONER:

OMANA C.
D/O.CHEMBAN PANGAN HOUSE
PUDUPARIYARAM POST, PALAKKAD-678 001.

R BY ADV. SRI.PHILIP T.VARGHESE
R BY ADV. SRI.THOMAS T.VARGHESE
R BY ADV. SMT.ACHU SUBHA ABRAHAM
R BY ADV. SMT.T.M.BINITHA

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

R.P.(F.C.) No.67 of 2012

Dated this the 29th day of September 2015

ORDER

The revision petitioner is the counter petitioner in M.C.No.340 of 2010 on the files of the Family Court, Palakkad, who in this revision petition challenges the order passed by the court below directing him to pay a monthly maintenance of Rs.2,500/- to the respondent herein, who is the wife of the revision petitioner.

2. Heard both sides.

3. The marriage between the revision petitioner and the respondent is not disputed. According to the

respondent herein, she was deserted by the revision petitioner after nine months of the marriage. According to the revision petitioner, the revision petitioner did not treat the respondent with cruelty, and it was the respondent, who had treated the revision petitioner with cruelty.

4. The learned counsel for the revision petitioner has argued that the revision petitioner was not granted an opportunity to cross-examine PW1 before passing the order impugned and in the said circumstances, serious prejudice had been caused to the revision petitioner. It appears from the records that PW1 was examined before the court below on 11.1.2012. On that day, the revision petitioner was not present before the court. However, there was representation for the revision petitioner. There is

nothing on record to indicate that the revision petitioner did not want to cross-examine PW1. No such submission was seen made by the learned counsel for the revision petitioner before the court below. Even then, the court below proceeded to pass the order impugned without affording a reasonable opportunity to the revision petitioner to cross-examine PW1. Having gone through the relevant inputs, I am of the view that the court below should have granted an opportunity to the revision petitioner to cross-examine PW1 before passing the order impugned. Since the revision petitioner was not granted an opportunity to cross-examine PW1 before passing the order impugned, the order impugned cannot be said to be legal, proper and correct and consequently, the same cannot be sustained.

In the result, this revision petition stands allowed setting aside the order impugned, and the matter is remitted to the court below for fresh consideration, in accordance with law, as expeditiously as possible and at any rate, within two months from the date fixed for the appearance of the parties before the court below, affording reasonable opportunity to both sides to substantiate their contentions.

The parties are directed to appear before the court below on 15.10.2015, without further notice.

It has been submitted by the learned counsel for the revision petitioner that the revision petitioner is prepared to deposit Rs.50,000/- before the court below towards the interim maintenance to the respondent. In view of the said submission, it is directed that the revision petitioner shall

deposit Rs.50,000/- before the court below towards the interim maintenance of the respondent within one month from today. If any such amount is deposited by the revision petitioner before the court below, the respondent shall be at liberty to withdraw the same.

*Sd// **B.SUDHEENDRA KUMAR**, JUDGE.*

dl

/ True copy /

PA to Judge