

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

OP (FC).No. 464 of 2014 (R)

PETITIONER:

SHYMON MATHEW
VATTAKUZHIYIL VEEDU, VEMOM POST, MANANTHAVADY TALUK
WAYANAD DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.SATHEESHAN ALAKKADAN

RESPONDENT:

MANJUSHA GEORGE
D/O.GEROGE, KUMARAPALLIYIL VEEDU, POOVATTAM POST
KODARANJ, KOZHIKODE DISTRICT-673 001.

R1 BY ADV. SMT.BIMALA BABY

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 21-01-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 464 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1. TRUE COPY OF THE OP NO.203/2013 OF FAMILY COURT, KALPETTA.
EXT.P2. TRUE COPY OF THE IA NO.73/2014 FILED BY THE RESPONDENT HEREIN
IN OP NO.203/2013 OF FAMILY COURT, KALPETTA.
EXT.P3. TRUE COPY OF THE COUNTER FILED BY THE PETITIONER IN IA
NO.73/2014 FILED BY THE RESPONDENT HEREIN IN OP NO.203/2013 OF FAMILY
COURT, KALPETTA.
EXT.P4. TRUE COPY OF THE RECEIPTS OF MONEY ORDERS SENT BY THE
PETITIONER TO THE RESPONDENT FOR MAINTENANCE.
EXT.P5. TRUE COPY OF THE RETURNS OF THE INCOME TAX SUBMITTED BY THE
PETITIONER TOWARDS FOR THE YEAR 2013-2014.
EXT.P5(A). TRUE COPY OF THE RETURNS OF THE INCOME TAX SUBMITTED BY
THE PETITIONER TOWARDS FOR THE YEAR 2014-2015.
EXT.P6. TRUE COPY OF THE NOTICE DATED 21/6/2014 TO THE PETITIONER
ISSUED BY HDFC BANK.
EXT.P6(a). TRUE COPY OF THE NOTICE DATED 9/7/2014 TO THE PETITIONER
ISSUED BY HDFC BANK.
EXT.P7. TRUE COPY OF THE ORDER DATED 23/8/2014 IN IA NO.73/2014 IN OP
203/2013 ON THE FILE OF FAMILY COURT, KALPETTA.

RESPONDENT(S) ' EXHIBITS : NIL

//TRUE COPY//

PS TO JUDGE

V.K.MOHANAN & P.D.RAJAN, JJ

.....
OP(FC)No.464 of 2014

.....
Dated 21st JANUARY, 2015

JUDGMENT

V.K.MOHANAN, J

The petitioner, who is the husband of the respondent herein challenging the interim order dated 23.8.2014 in I.A.No.73 of 2014 in O.P.No.203 of 2013, preferred this original petition under Article 227 of the Constitution of India praying inter alia to set aside the above referred order.

2. The petitioner herein filed O.P.No.203 of 2013 for divorce against the respondent. During the pendency of the above OP, the respondent in the court below preferred a petition under Section 36 of the Divorce Act, claiming interim maintenance and litigation expenses from the petitioner. According to the claimant, the respondent, petitioner is engaged in Aluminium fabrication work on contract basis and he is getting monthly income of Rs.40,000/- and he is an income tax assessee. It is the case of the claimant that she has no job and no income

and she is not in a position to maintain herself and the child who is studying in L.K.G. Countenancing the claim and contentions of the respondent/wife, petitioner filed a counter statement denying the claim of the respondent wife and disputing the income alleged by the respondent. However, the petitioner contended that due to harassment of the respondent/wife, he is not in a position to execute his work and therefore, he is not having income as alleged by the respondent. It is also contended that at the time of filing the above application in the court below, he was having no job and no sufficient income. However, the court below having considered the rival claim and contention, directed the petitioner herein to pay interim maintenance @ Rs.4000/- both to the wife and the child, though the interim maintenance claimed was Rs.15,000/- and Rs.10,000/- respectively for wife and the child. It is the above order which is challenged in this O.P.

3. Heard the learned counsel for the petitioner and the respondent.

4. As the main matter is pending before the Family Court at Kalpetta, we are of the view that instead of retaining the file in this court, the Family Court can be directed to expedite the proceedings pending before that court. However, it appears that petitioner himself has admitted that he was doing Aluminium fabrication work and he was an income tax assessee. But it is relevant to note that the petitioner has got a contention that at the time of passing Ext.P7 order, he was not doing the said work and he was not having sufficient income. Despite the above contentions, in the impugned order, the learned Judge has opined that it cannot be held that the petitioner herein/husband has no means and further observed that he is a person capable of doing work and earning money. It was also found that though the respondent herein/wife failed to show that the petitioner was having his monthly income of Rs.4 lakhs, considering the circumstances referred therein, the learned Judge has held that the petitioner is having means to maintain the respondent and the child. However the learned Judge has

not arrived into and fixed the exact income of the petitioner, though held that petitioner is having means to maintain the wife and the child.

5. In the above circumstances, we fail to understand the criterion adopted by the court below in fixing the interim maintenance @ Rs.4000/-. It is a fact that the evidence has not yet started in the proceedings before the court below and therefore, it is for the court to take appropriate decision on the basis of the evidence yet to be adduced in the court. In the absence of any evidence or materials to find out the income of the petitioner, we are of the view that the interim maintenance fixed by the court below requires modification and according to us, the petitioner can be directed to pay maintenance @ Rs.2000/- to the first respondent wife and Rs.1500/- to the child.

In the result, this original petition is disposed of modifying the quantum fixed by the trial court towards interim maintenance and accordingly the petitioner is directed to pay monthly interim maintenance @ Rs.2000/-

to the respondent wife and Rs.1500/- to the child. He is also directed to pay a sum of Rs.5000/- as litigation expenses. Petitioner is directed to deposit the entire arrears in the trial court at the revised rate, after deducting the payment already made, within one month from today. The trial court is directed to expedite the proceedings in O.P.No.203 of 2013 and dispose of the same as expeditiously as possible.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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