

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 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

OP (FC).No. 502 of 2014 (R)

AGAINST ORDER IN I.A.NO.3035/2013 IN O.P.NO.1896/2012 OF THE FAMILY
COURT, THIRUVANANTHAPURAM DATED 21.5.2014.

PETITIONER(S)/PETITIONER:

R.C.SHEEJAKUMARI AGED 27 YEARS
D/O. RETNAMMA, DIVIKARA VILASOM, VELLAMKETTUVILA
NETHAJINAGAR, NEMOM.P.O., THIRUVANANTHAPURAM.

BY ADVS.SRI.D.SAJEEV
SMT.LIGEY ANTONY

RESPONDENT(S)/COUNTER PETITIONER:

PRAVEEN.S.R.
S/O. SUKUMARAN, PREETHA BHAVAN, MUTHALAMUKKU
KURACHAL, ARAMADA.P.O., THIRUVANANTHAPURAM-695032.

R BY ADV. SRI.S.V.PREMAKUMARAN NAIR
R BY ADV. SRI.R.T.PRADEEP

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 502 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1. TRUE COPY OF THE MEMORANDUM OF THE PETITION FILED AS O.P NO. 1896/2012 BEFORE THE HONOURABLE FAMILY COURT AT THIRUVANANTHAPURAM.
- P2. TRUE COPY OF THE INTERIM APPLICATION FILED UNDER SECTION 24 OF THE HINDU MARRIAGE ACT AS I.A. NO. 3035/2013 IN OP NO. 1896/2012.
- P3. TRUE COPY OF THE OBJECTION DATED 27-12-13 FILED BY THE COUNTER PETITIONER AGAINST EXT.P2.
- P4. CERTIFIED COPY OF THE ORDER DATED 21-5-2014 IN I.A. NO. 3035/2013 IN OP NO. 1896/2012 ON THE FILE OF THE HONOURABLE FAMILY COURT, THIRUVANANTHAPURAM.

RESPONDENT(S) ' EXHIBITS

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NIL

TRUE COPY

PA TO JUDGE.

acd

'C.R.'

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

O.P.(FC) No. 502 of 2014

Dated this the 25th day of February, 2015

JUDGMENT

P.D.Rajan, J.

This original petition is filed under Article 226 of the Constitution of India to quash Ext.P4 order in I.A.No.3035/2013 in O.P.No.1896/2012 of Family Court, Thiruvananthapuram on the ground that it was passed without properly appreciating the law illustrated under Section 24 of the Hindu Marriage Act, 1955. The petitioner is the wife of one Praveen, who filed O.P.No.1896/2010 in the Family Court, Thiruvananthapuram for getting maintenance from her husband. She also filed another application for getting interim maintenance from him, which was dismissed by the learned Judge, on the ground that non-consummation

of the marriage is a sufficient ground for nullity of marriage and the question of alimony cannot be considered at this stage.

2. The marriage between the petitioner and the respondent was solemnized on 16.5.2010 and they resided together as husband and wife till 19.5.2011. Subsequently, the respondent deserted the petitioner and living separately. In the circumstances, the petitioner approached the Family Court with the above O.P. The husband in the trial Court contended that the marriage was not consummated since the petitioner disclosed that she had an affair with another person and deserted him. Now he is working in SP Fort Hospital, Thiruvananthapuram as a Driver and living with limited source of income, therefore, she is not entitled to get maintenance.

3. The learned Judge of the Family Court

considering the rival contentions put forward by both counsel, observed that non-consummation of the marriage is sufficient ground for nullity of marriage, hence the question of alimony cannot be considered at this stage and dismissed the application accordingly.

4. According to Section 24 of the Act, where in any proceeding under the above Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable. This provision of interim maintenance is

provided in the above Section to meet the immediate need of the petitioner. This is because in granting maintenance there is a practice of regular enquiry after completing the procedural formalities, which will cause considerable delay in disbursing it. The basis of the claim of interim maintenance is that the claimant has no independent income to support herself or himself.

5. We are not in a position to approve the conclusion reached by the Court below. The wife is entitled to get maintenance pendente lite and expenses of proceedings as per Section 24 of the Hindu Marriage Act. Non-consummation is not a ground for denying maintenance under Section 24 of the Hindu Marriage Act, but it can be considered only for limited purpose mentioned under Section 12 of the Hindu Marriage Act. Here, the petitioner contended that her husband is working in SP

Fort Hospital as a Driver and getting monthly salary of ₹15,000/-. and she has no income for her livelihood. Without considering the economic aspect, the learned Judge of the Family Court dismissed Ext.P2 petition for interim maintenance. But, the respondent urged that there was desertion from the side of the wife, after that there was an arrangement to file a joint petition under Section 13B of the Hindu Marriage Act, in the Family Court, but the wife declined to co-operate in filing a joint petition. Now, she approached this Court with this petition after suppressing the earlier joint petition, therefore, she is not entitled to get maintenance at this stage.

6. It is admitted by both parties that the main petition is pending in the Family Court and final decision has not been taken in that matter. This Court in Sudheesh Babu v. Sherly [2009 (4) KLT 542] held that "it is very

evident that S.24 applies when any proceeding under the Act is pending and no exception can be carved out for proceedings under S.12 of the Hindu Marriage Act. It is true that S.24 employs the expression "wife" and "husband". The mere fact that marriage already solemnised is sought to be avoided by declaration of nullity under S.12 cannot militate against the status of the spouses as husband and wife until such a declaration of nullity is granted. The status of the husband and wife for the purpose of S.24 has been achieved by the spouses by such solemnization. The mere fact that the said relationship is sought to be annulled by initiation of the proceedings under S.12 of the Hindu Marriage Act cannot justify a contention that the respondent herein is not a "wife" to whom alone S.24 can apply. The objection raised on both grounds that S.24 is not applicable to the

proceedings under S.12 and that the petitioner cannot be said to be a husband coming within the sweep of that expression in S.24 of the Hindu Marriage Act, cannot be accepted."

7. The expression used under S.24 is 'pendente lite' which means pending litigation or during litigation, that is for a period from the date of commencement of litigation till it is concluded. This principle of temporary alimony is a concept of economic guardianship to administer justice either to the wife or to the husband, which is extended to support either of them during the pendency of the proceeding alone. Analysing the Section, it is found that the right of equality is protected by the parliament and the question of validity of the marriage will not be a ground for denying such relief to wife or husband. Therefore, we conclude that an application for pendente

lite maintenance can be filed in any proceedings under the Hindu Marriage Act 1955 (Sections 9 to 13) and any application made after disposal of the main petition has no independent existence. In short, the primary responsibility of the Family Court is that before passing the decree in the main petition, it has to dispose of the interim maintenance application under Section 24 of the Act exercising its discretionary powers. While exercising such discretionary power, the Court has to follow sound judicial principles and has to consider the economic condition of both parties. Here, the main petition is pending in the Family Court, Thiruvananthapuram. While so, the observation of the Family Court that petition for maintenance pendente lite cannot be considered at this stage, since the respondent contended that there is no consummation of marriage, is per-se illegal and absolutely

unsustainable. An application pending under Section 12 is not a ground to refuse interim maintenance to the wife. Therefore, Ext.P4 order is liable to be set aside.

In the result, Ext.P4 order is set aside by invoking jurisdiction under Article 226 of the Constitution of India and the matter is remitted to the Family Court, Thiruvananthapuram for fresh consideration. The learned Judge of the Family Court shall consider the income of the wife and the husband and dispose the above petition for interim maintenance as per law.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

