

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

RPFC.No. 74 of 2015 ()

MC 21/2014 (OLD No.82/11) of FAMILY COURT, OTTAPALAM

REVISION PETITIONER(S)/RESPONDENT:

T.K.PHILIP AGED 64 YEARS
S/O. MATHI VARGHESE, THAYILPEEDIKAYIL HOUSE
CHUNKKATHARA, EDAKARA, ERANAD TALUK
NILAMBOOR.

BY ADVS.SRI.VARGHESE PARAMBIL
SRI.ALBERT JOSEPH
SRI.RAMACHANDRAN U
SRI. SUNEER K.S
SRI. BOBAN VARGHESE
SRI.T.K.KUNJUMON

RESPONDENT(S)/PETITIONER :

JASEENTHA GEORGE @ JESSY GEORGE , AGED 53 YEARS
D/O. K.V.GEORGE, VI/333, THAYILPEEDIKAYIL VEEDU
EDAN HOUSE, ARAYAKKODE, THENKARA AMSOM
MANNARKKAD TALUK.

BY ADV. SRI.R.SREEHARI

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 05-06-2015 ALONG WITH RPFC 191/2015, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

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K.HARILAL, J.

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R.P.(FC) Nos.74 & 191 of 2015

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Dated this the 5th day of June, 2015

ORDER

These revision petitions are filed challenging the order passed in M.C.No.21/2014 (old No.82/11) on the files of the Family Court, Ottapalam and the parties are in common. Therefore, both R.P.F.Cs are heard together and disposed of accordingly. The parties are referred to as in the M.C.

2. R.P.F.C No.74/2015 was filed by the respondent in M.C.No.21/14, who is the husband of the petitioner and R.P.F.C No.191/2015 was filed by the petitioner in the above M.C., challenging the inadequacy of quantum of maintenance awarded to her.

3. The petitioner is the divorced wife of the respondent. Their marriage was solemnized in the year 1983 and lived together up to 1998 and thereafter, the marriage was dissolved by the decree of the Family Court,

in the year 2007. According to the petitioner, from 1998 onwards, she was residing separately. She has no job or income; whereas the respondent is a pensioner and he is getting ₹5,000/- as pension. He is also getting ₹15,000/- per month as rent from the rented building which he owns and possesses. He had sold away his family property and obtained an amount of ₹75,00,000/- and that amount is deposited in a bank. Thereby, he is earning ₹1,00,000/- as interest from the deposit. Even though she owns 4 acres and 89 cents of land, which contains some rubber trees, she is getting only ₹3,000/- per month as income. She has to look after her son studying at Bangalore and a substantial amount is required to meet his educational expenses. She claimed ₹15,000/- per month.

4. Per contra, the respondent admitted the status of the petitioner as divorced wife. But, he denied the allegation that she is unable to maintain herself. According to him, in the year 1984, he has gone to Muscat for employment and in the year 1987, he had purchased 5 ½

acres of land consisting of rubber trees at Kottappuram in the name of the petitioner at the instance of his brother in law. The amount sent by the respondent in his NRI account was taken to lead a luxurious life. Now, the rubber estate is in the possession of the petitioner. Though he was looking after the rubber plantation consisting of 1200 rubber trees, now the petitioner has been taking yield from the rubber plantations and thereby, she is getting huge amount per day. He has given money to meet the entire marriage expenses of their daughter and also he meets the entire educational expenses of their son, who is studying for M.Sc. at Bangalore. Moreover, he is suffering from so many ailments and he needs huge amount for medical expenses. After considering the rival pleas, the oral evidence of the petitioner and Exts.P1 to P4 produced by the respondent, the court below directed the respondent to pay maintenance allowance @ ₹3,000/- to the petitioner. The legality of the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance

are under challenge in these revision petitions.

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

6. The learned counsel for the petitioner contended that the quantum of amount determined by the court below as monthly maintenance allowance is insufficient to meet the requirements of the petitioner. The quantum of amount is disproportionate with the income of the respondent.

7. Per contra, the learned counsel for the respondent advanced arguments assailing the findings of the court below whereby the petitioner is entitled to get maintenance allowance. The sum and substance of the argument advanced by the learned counsel for the respondent is that the petitioner owns 5½ acres of rubber plantation and thereby she is getting sufficient income. The learned counsel further admitted that he could not produce evidence to bring out in evidence the exact income, which is being obtained from the rubber plantation by the petitioner, due to the laches from the part of the counsel,

who appeared for the respondent before the trial court. The learned counsel produced a bunch of documents before the court and submitted that though these documents were handed over to the counsel so as to produce before the court in evidence, the counsel omitted to do so as instructed by the respondent. The learned counsel prayed for a further opportunity to adduce evidence so as to bring out in evidence the exact amount, which is being received by the petitioner, from the rubber plantation. The documents which were handed over to the counsel and found kept intact in the case bundle include bank passbook, medical records etc.

8. Admittedly, the petitioner is a divorced wife of the respondent. Certainly, she is entitled to get maintenance allowance if she is unable to maintain herself. It follows that if the petitioner has sufficient means to maintain herself, she will not be entitled to get maintenance allowance. So, the question to be considered is, whether the respondent has succeeded in proving that the petitioner

has sufficient means to maintain herself ?

9. Going by the averments in the petition itself, it is seen that the petitioner has admitted that she owns and possesses '4' acres and 89 cents of land containing rubber plantation. But, according to her, she is getting only ₹ 3,000/- per month as income. Apparently, I am unable to accept the said contention that she is getting ₹3,000/- only per month from so much extent of rubber cultivation. Where the petitioner herself admitted that she owns and possesses so much extent of rubber plantation which may fetch a considerable income, she could have adduced evidence to show the exact income, which is being received per month by her. But, the petitioner has not adduced any evidence to show the exact income. Similarly, the respondent also miserably failed to bring out any material in evidence to indicate the probable income, which could be generated from so much extent of rubber plantation. The learned counsel for the respondent has pointed out the laches and negligence committed by the counsel, who

appeared for the respondent in the lower court. It is pertinent to note that in the memorandum of revision petition itself, the petitioner stated that as the respondent was not in a position to appoint an advocate, as per direction of the Kerala State Legal Service Authority, the District Court appointed an advocate to appear for and on behalf of him. Now the respondent sought for an opportunity to adduce evidence before the trial court.

10. On an analysis of the evidence on record and submissions at the Bar, I find that both parties failed to adduce evidence in accordance with their respective pleas. But, it is to be remembered that the burden is heavy on the respondent to prove that the petitioner is able enough to maintain herself. Adjudication of a lis on merits, after affording sufficient opportunities to the parties to produce required evidence is more desirable than disposal on available materials, though insufficient. In the above view, I find that the respondent can be given an opportunity to adduce further evidence on terms.

11. Consequently, the impugned order will stand set aside on condition that the respondent deposits ₹10,000/- as cost in the Family Court, within a period of one month from the date of receipt of a copy of this order and the petitioner is allowed to realise the same. On compliance of the said condition, the Family Court shall consider the matter afresh and pass order, after affording sufficient opportunities to both parties to adduce evidence, at any rate, within a period of six months from today. Needless to say, in event of failure to comply with the condition, the impugned order will stand in force.

These revision petitions are disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge