**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE AMIT RAWAL**

**&**

**THE HONOURABLE MR. JUSTICE EASWARAN S.**

**THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946**

**MAT.APPEAL NO. 997 OF 2014**

**AGAINST THE JUDGMENT DATED 31.12.2013 IN OP NO.1439 OF 2002 OF FAMILY COURT,THIRUVANANTHAPURAM**

**APPELLANT/COUNTER PETITIONER :**

**HAJI JALALUDEEN PARAYIL @ JALAL M**
**S/O.SRI.MOIDEEN KANNU, T.C.NO.46/1039**
**(OLD T.C.38/480), POWER HOUSE ROAD,**
**CHENTHITTA, CHALAI P.O.,**
**THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS. SRI.P.VIJAYA BHANU (SR.)**
**SRI.AJEESH K.SASI**
**SRI.UNNI SEBASTIAN KAPPEN**

**RESPONDENTS/PETITIONERS :**

1 **SAKEENA D/O.MOIDEEN KOYA,**
**T.C.66/2661, PARAVILA PARAYIL VEEDU,**
**PACHALLUR DESOM, THIRUVALAM VILLAGE,**
**THIRUVANANTHAPURAM DISTRICT, 695 027.**

2 **KHADEEJA D/O.JALALUDEEN, T.C.NO.66/2661,**
**PARAVILA PARAYIL VEEDU, PACHALLUR DESOM,**
**THIRUVALAM VILLAGE,**
**THIRUVANANTHAPURAM DISTRICT, 695 027.**

3 **AIYSHA FEMINA D/O.JALALUDEEN, T.C.NO.66/2661,**
**PARAVILA PARAYIL VEEDU, PACHALLUR DESOM,**

**THIRUVALAM VILLAGE,**
**THIRUVANANTHAPURAM DISTRICT,**
**695 027.**

**BY ADV SRI.D.KISHORE**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 25.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**AMIT RAWAL & EASWARAN S., JJ.**
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**Mat.A. No.997 of 2014**
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**Dated this the 25th day of July, 2024**

**JUDGMENT**

**AMIT RAWAL, J.**

The present Matrimonial Appeal is directed against the judgment of the Family Court, Thiruvananthapuram whereby, O.P. No.1439 of 2002 filed by the respondent/wife claiming maintenance - past, present or future, marriage expenses for children and return of gold ornaments, had been allowed in part by awarding the compensation to the children till attaining the age of majority and the wife, marriage expenses of Rs.5,80,000/- each for respondents 2 and 3 who are petitioners 2 and 3 before the Family Court.

2. The marriage between the appellant and the 1st respondent, Sakeena was solemnized on 14th of May 1982. Out of the above marriage two children, both girls, have been born, one on 25.5.1987 and the other on 20.5.1991. After living together for sometime, the relationship between the couple became in-cordial resulting into

registration of Crime No.135 of 2002 under Sections 324, 354 and 506(1) of the Indian Penal Code (IPC) and also Crime No.138 of 2002 under Section 498A of the IPC.

3. The appellant/husband contested the aforementioned claim and admitted the factum of having the first wife, Jameela and children out of the said marriage. He says that after the marriage, the relationship with the previous wife become strained and the Muslim law did not prohibit him to perform a second marriage and it is in that background the marriage was performed with the 1st respondent herein, but the 1st respondent/petitioner, after the performance of the marriage, developed illicit relationship with another person, therefore, the relationship became unviable. Since the parties were at variance, the learned Family Court framed the following points for determination:

> (1). Is not the petitioners 1 to 3 entitled to maintenance both past and future at the rate of ₹4000/- per month as alleged?
> (2). Is not the 1st petitioner entitled to recover gold ornaments described as B schedule or its value?

(3). Is not the petitioners 2 and 3 entitled to marriage expenses at the rate of Rs.8 lakh each as claimed?

(4). Is not the 1st petitioner entitled to a perpetual prohibitory injunction restraining respondent from forcibly evicting them from A schedule property and building therein?

(5) Reliefs and costs?

4. On behalf of the respondents/petitioners in the Original Petition, they examined PW1 to PW7 and brought on record Exts.A1 to A19. The Court Exhibits were marked as C1, the report of the Commissioner and X1 the report of Human Rights Protection and Welfare Council Kerala. The husband did not examine.

5. The learned Family Court, on the basis of the evidence brought on record, as noticed above, declined the relief with regard to the return of the gold ornaments but, granted the past maintenance to the wife at the rate of Rs.3000/- from 1.6.2000 till the date of the filing of the petition i.e. 31.10.2002, at the rate of Rs.4,000/- per month from November 2002 to September 2010 and, at the rate of Rs.5,000/- from October 2010 till 31.12.2013 and at the rate of Rs.6,000/- from 31.12.2013 till she continue to be the wife or

divorced wife. In respect of the 2nd and 3rd petitioners/respondents 2 and 3 herein, the Family Court ordered that the 2nd petitioner (first child) is allowed to realise past maintenance @ Rs.2000/- per month from 1.6.2000 till the date of filing of the petition (31.10.2002) and Rs.3,000/- per month from November 2002 till attainment of majority and the 3rd petitioner (the second child) is allowed to realise past maintenance @ Rs.2000/- per month from 1.6.2000 till the date of filing of the petition (31.10.2002) and Rs.3,000/- per month from November 2002 to September 2006 and @ Rs.4000/- from October 2006 till attainment of majority. It was also ordered that the 2nd and 3rd petitioners are allowed to realise Rs.5.80 lakh each as marriage expenses incurred by the 1st petitioner, from the respondent and his assets.

6. It is a matter of record that both the children got married later. Since the respondent/wife was facing financial difficulties and fully dependent upon the relatives and the family members, had to perform the marriages of her daughters by borrowing the money, it is in that background sought the claim. She placed on record the

material to establish the same and on the basis of the material, the Family Court assessed the amounts and granted the maintenance.

7. The learned counsel appearing on behalf of the appellant/husband submitted that the Family Court abdicated in not assigning any reasons for awarding the compensation for, the petitioners before the Family Court were never ill treated by the appellant. Criminal case was registered at the instance of the relatives. Even if the appellant had not lead any evidence, but the respondents miserably failed to place on record any material to establish the claim and once the claim with regard to the return of the gold ornaments has not been accepted, the other claim was required to be belied. Even the petitioner-wife had also gone abroad for search of job but, returned back.

8. On the other hand Sri.D.Kishore, the learned counsel appearing on behalf of the respondents, wife and daughters, submitted that the judgment of the Family Court is perfectly legal and justified and the amount of maintenance awarded is too paltry and liable to be increased by exercising the powers under Order 41 Rule

33 of the Code of Civil Procedure. In support of the contention, the learned counsel would rely on the judgment of the learned Division Bench of this Court in **Ismayil v. Fathima and Another** [2011 (3) KHC 825] wherein it has been held that a Muslim father is liable under the personal law to pay maintenance to his unmarried daughter, either major or minor and therefore the amount of maintenance awarded till the age of majority is liable to be increased.

9. We have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force on merit. The appellant/husband has not been able to come to lead evidence and support the stand taken in the written statement/objection filed to the claim set up by the respondent/wife and daughters. His conduct revealed that he is a married man and is the father of five children from the 1st marriage and two children from the 2nd marriage. The specific contention of the respondent wife was that at the time of the performance of marriage in 1982, the appellant/husband did not disclose about the subsistence of the 1st marriage and about the children of previous marriage. Had it been

disclosed, perhaps she would have given a thought of performing the marriage keeping in view the financial constraint which is likely to arise in future and precisely it happened the basic reason when the husband neglected to maintain. We are of the view that finding of the fact and law arrived at by the Family Court awarding the maintenance as noticed above as also the marriage expenses are perfectly legal and justified and would not call for any interference. No ground for interference is made out.

The Mat. Appeal is dismissed accordingly. We also decline the prayer of Sri. D.Kishore for exercise of the power under Order 41 Rule 33 of the Code of Civil Procedure.

Sd/-

**AMIT RAWAL**
**JUDGE**

Sd/-

**EASWARAN S.**
**JUDGE**

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