

IN THE HIGH COURT OF KERALA AT ERNAKULAM

[C.R.]

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR.JUSTICE R.NARAYANA PISHARADI

TUESDAY, THE 19TH DAY OF DECEMBER 2017/28TH AGRAHAYANA, 1939

Mat.Appeal.No.1234 of 2015 ()

(AGAINST THE JUDGMENT IN OP 283/2011
OF FAMILY COURT, PALAKKAD DATED 16-07-2015)

APPELLANT/PETITIONER:-:

AMBIKA,
D/O.ARAVINDAKSHAN, AGED 25 YEARS, DOOR NO.63/129,
GURUSWAMY PILLA STREET, NEW TOWN,
PODANUR, COIMBATORE, TAMILNADU STATE.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU M.P.

RESPONDENT/RESPONDENT:-:

K.ARAVINDAKSHAN, AGED 64 YEARS,
S/O.KUNHIRAMAN, AMRITHA NIVAS, AMBIKA NAGAR,
AKATHETHARA, PALAKKAD DISTRICT-678 501.

BY ADV. SRI.P.R.VENKETESH

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 19-12-2017,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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**P.N.RAVINDRAN, J
&
R. NARAYANA PISHARADI, J**

Matrimonial Appeal No.1234 of 2015

Dated this the 19th day of December, 2017

JUDGMENT

R. Narayana Pisharadi, J

This appeal is filed by the petitioner in O.P.No.283 of 2011 on the file of the Family Court, Palakkad.

2. The respondent in the appeal is the father of the appellant. He is the respondent in O.P.No.283 of 2011 filed in the Family Court. The parties shall be hereinafter referred to as the petitioner and the respondent.

3. The petitioner filed O.P.No.283 of 2011 in the Family Court claiming an amount of Rs.5,00,000/- from the respondent to meet the expenses of her marriage. The respondent filed counter statement denying marital relationship with the mother of the petitioner. He also denied the paternity of the petitioner and also his liability to meet the expenses of her marriage.

4. During the proceedings before the court below, the petitioner and her mother were examined as PW1 and PW2 and Exts.A1 to A28 documents were marked on the side of the petitioner. The respondent was examined as RW1. On appreciating the evidence adduced by the parties, the Family Court found that

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the appellant who is receiving rent from two buildings owned by her has got sufficient income to meet the expenses of her marriage and therefore dismissed the petition.

5. We have heard the learned counsel for the appellant/petitioner and also the respondent.

6. The learned counsel for the appellant contended that the lower court went wrong in coming to the conclusions that the petitioner is a person who earns money and that she is not entitled to claim the expenses of her marriage from the respondent. *Per contra*, the learned counsel for the respondent supported the findings made by the lower court. He has submitted that the lower court has rightly dismissed the petition.

7. Section 20(1) of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the Act') provides that a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents. Section 20(2) of the Act provides that a legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor. Section 20(3) of the Act states that the obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends so long as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or

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herself out of his or her own earnings or other property.

8. The respondent denied the marital relationship with the mother of the petitioner. It is immaterial whether there was any valid marriage between the respondent and the mother of the petitioner. As per Sections 20(1) and 20(2) of the Act, the father has obligation to maintain his daughter, whether legitimate or illegitimate.

9. Paternity of the petitioner was denied by the respondent in the counter statement filed by him. However, when he gave evidence as RW1, in the affidavit filed in lieu of examination-in-chief, he conceded that he is the father of the petitioner though she was born in extra marital relationship with her mother. Further, Ext.A1 report containing the result of DNA test also proves that the respondent is the father of the petitioner.

10. Section 20(1) of the Act enjoins upon a Hindu to maintain his or her legitimate or illegitimate children. Section 20(3) of the Act narrows down the legal obligation to maintain an unmarried daughter in so far as she is unable to maintain herself from her own earnings or property. In short, under Section 20, a Hindu is under legal obligation to maintain, amongst others, her unmarried daughter, in so far as such unmarried daughter is unable to maintain herself from her own source of income. This obligation

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to maintain is personal and legal in character and arises from the existence of the relationship between the parties (**Commissioner of Gift Tax v. Indira Devi** : 1998 KHC 403 and **Viswambharan v. Dhanya** : 2005 KHC 119). The right of a minor girl for maintenance from parents after attaining majority till her marriage is recognized in Section 20(3) of the Act (**Jagdish Jugtawat v. Manju Lata**: (2002) 5 SCC 422). As per Section 3(b) (ii) of the Act, in the case of an unmarried daughter, 'maintenance' includes the reasonable expenses of and incident to her marriage. There is a duty cast on the father to maintain the minor daughter till her marriage and to meet her marriage expenses.

11. At the time of filing the petition, the petitioner was not married. Her marriage took place during the pendency of the petition. The fact that she got married after filing the petition does not create any bar in claiming the expenses of the marriage from her father. In **Roopa v. Jallur Musturappa** : 2006 KHC 3719 : AIR 2006 Kar. 196), the Karnataka High Court has held that if the claim for marriage expenses is made when the daughter is not married and if she gets married subsequent to the institution of the proceedings, the father has the obligation to meet her marriage expenses. We are in respectful agreement with this view.

12. The lower court has denied the claim of the petitioner on

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the ground that she gets Rs.6,000/- per month as rent from each of the two buildings owned by her. There is no reliable evidence to find that she gets Rs.12,000/- per month as rent from the two buildings. When examined as PW1, the petitioner has admitted in the cross examination that two houses were constructed in the property having an extent of four cents belonging to her and also that the two buildings have been rented out. A suggestion was made to her that she was getting Rs.6,000/- per month as rent from each building. It is true that the petitioner did not deny this suggestion made to her in the cross examination. She only stated that she does not know about it. But, she has stated that it was her mother who was collecting the rent of the buildings. When examined as PW2, the mother of the petitioner has given evidence that the buildings have not been leased out. Her evidence on this aspect cannot be believed in the light of the admission in that regard made by PW1 in her evidence. But there is no reliable evidence regarding the amount of rent of the two buildings. It is also to be noted that when examined as RW1, the respondent had no specific case regarding the amount of rent being obtained by the petitioner or her mother from the two buildings.

13. Even assuming that the petitioner or her mother was getting Rs.12,000/- per month as the rent of the two buildings, it is

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not a sufficient ground to reject the claim of the petitioner in *toto*. As stated in ***Karunakaran Nair v. Suseela Amma* : 1987 (2) KLT 666**, a person does not live by bread alone. There are other basic necessities in life. One can just imagine what amount the petitioner or her mother could have saved after meeting the day to day expenses. The respondent has got no case that the petitioner or her mother is employed or that they have got any other source of income. In these circumstances, we have no hesitation to find that the order of the lower court rejecting the claim of the petitioner in *toto* is erroneous.

14. In ***Smt. Sneh Prabha v. Ravinder Kumar* : AIR 1995 SC 2170**, it has been held that even in case of daughters who are grown up and living with mother and maintained by mother who is employed and earning salary, they are entitled to get financial assistance from their father at the time of their marriage. Even in a case where the unmarried daughter is living with the mother, who is getting some income and is being looked after by her, she is entitled to claim maintenance from the father also which includes the educational expenses and marriage expenses. Merely because the mother is looking after the affairs of the unmarried daughter including performance of marriage, it will not exonerate the father from his legal and personal obligation to contribute his share for

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that purpose (**Leelamma v. Moni** : 2017 (3) KHC 340).

15. Now we come to the question of quantum of the marriage expenses. As per Section 3(b) (ii) of the Act, in the case of an unmarried daughter, 'maintenance' includes not only the reasonable expenses of marriage but also expenses incident to her marriage. Marriage expenses are of two types: (1) which are directly incurred for marriage; and (2) which are incurred indirectly or incidentally to the marriage.

16. The petitioner claimed an amount of Rs.5,00,000/- as the expenses of her marriage. In the affidavit filed by her in lieu of examination-in-chief, the petitioner has given details of the expenses incurred by her with regard to each item. However, the amount alleged to have been spent by her in respect of many items is on the higher side. For example, it is stated that she had spent an amount of Rs.1,00,000/- for purchasing clothes for the marriage. It is also stated that she had purchased gold ornaments worth Rs.5,00,000/- for the marriage. The fact that the petitioner lavishly spent money for her marriage is not a sufficient ground to direct the respondent to bear with that liability in whole.

17. Moreover, the financial capacity of the respondent has also to be taken into consideration in determining the amount which the petitioner is entitled to get from him. The mere fact that the

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father is not possessed of sufficient means does not in any way obliterate his liability under Section 20 of the Act to provide maintenance to the child. However, the question relating to his means would be relevant in considering the quantum of maintenance (**Anilkumar v. Gopikuttan Nair : 1984 KLT 900**).

18. The respondent is aged 62 years. He was a government servant. At the time of hearing the appeal, he was present in the court and we had interacted with him. He has told the court that he was a government servant and he has retired from service and that he gets Rs.30,000/- per month as pension. At the same time, he has also told the court that he is a person having cardiac problems. He is living with a pacemaker implanted inside his body. He produced the relevant documents in that regard for our perusal. The fact that the respondent is a cardiac patient is also not disputed by the learned counsel for the appellant.

19. Considering the totality of the facts and circumstances including the status of the petitioner in the society and the social conditions in which she was living and the standard of living of the parties, we find that it would be reasonable to direct the respondent to pay an amount of Rs.2,00,000/- to the petitioner towards her marriage expenses.

20. In the result, the appeal is allowed. The order of the

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lower court dismissing the petition O.P.No.283 of 2011 is set aside. The aforesaid petition is allowed in part, directing the respondent to pay an amount of Rs.2,00,000/- to the petitioner towards the expenses incurred by her for her marriage. This amount would carry interest at the rate of 6% per annum from the date of filing the petition till the date of realisation. Considering the relationship between the parties, we find that it is proper to direct both the parties to suffer their respective costs throughout.

Sd/-

(P.N.Ravindran, Judge)

Sd/-

(R. Narayana Pisharadi, Judge)

// True Copy //

P.A. To Judge

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