2024:KER:92969

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 9TH DAY OF DECEMBER 2024 / 18TH AGRAHAYANA, 1946

RPFC NO. 223 OF 2020

AGAINST THE ORDER DATED 30.11.2019 IN MC NO.105 OF 2019 OF FAMILY COURT, THALASSERY

REVISION PETITIONER/COUNTER PETITIONER:

BY ADV SRI.C.K.SREEJITH

RESPONDENTS/PETITIONERS:

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BY ADV SRI.ABDUL RAOOF PALLIPATH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 09.12.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

O R D E R

DEVAN RAMACHANDRAN (J)

Ending a marriage is traumatic for most; and it is exacerbated for women who have to navigate settlement terms and follow up on sums for maintenance of themselves and their children.

2. To add to the complexity is the stigma of divorce, particularly in many communities in India.

3. In a divorce, large number of - if not most - women still continue to be home makers, thus pushing them to a spot. In most cases, claims for maintenance - not merely for the wife, but also for the children – are met with obdurate resistance.

4. The defences erected are sometimes formidable, other times ingenuous; but they

are for another day to speak on.

5. Out of the most ubiquitous response to a claim for maintenance is that the obligator has no resources to honour it. This is so even when the claims are so exiguous that the beneficiaries will be able to barely exist on it, rather than luxuriate.

6. This is where we deem it important to speak. Our view, which is nothing novel – having been cemented by the Hon'ble Supreme Court through the years - is firmly that, when the maintenance claimed is the most essential for the beneficiaries to sustain, the defence of "no resource" is untenable, particularly when the obligant is capable of earning, without any physical incapacitation.

7. Otherwise, it would be open to the obligant not to work; or lie idle; or choose to earn solely for himself/herself and then

impel the defence of lack of adequate resources.

8. This is impermissible in the constitutional and statutory Scheme of this Nation; which has now been declared beyond pale of any doubt by the Hon'ble Supreme Court very recently in ***Apurva @ Apurvo Bhuvanbabu Mandal v. Dolly & others*** [(2024) LiveLaw (SC 977)] elevating the sums of maintenance in priority to even that of creditors under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and Insolvency and Bankruptcy Code, 2016. While doing so, the Hon'ble Court has declared basic maintenance to be a part of fundamental right to life. These declarations being acme, need to be read and understood carefully, for which we reproduce them below:

> *"The right to maintenance being equivalent to a fundamental right will be superior to and have overriding effect than the statutory rights afforded to Financial Creditors, Secured Creditors, Operational Creditors or any other such claimants encompassed within the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) the Insolvency and Bankruptcy Code, 2016 or similar such laws."*

9. We proceed to answer the issues in this case in the backdrop of the preface above.

10. The order of the learned Family Court, Thalassery, in M.C.No.105/2019, is called into question by the petitioner, who is the husband of the 1st respondent and father of respondents 2 to 5.

11. Sri.T.Ramesh Babu - learned counsel for the petitioner, argued that the

quantum of maintenance ordered by the learned Family Court is excessive and beyond the means of his client; and therefore, that he has been constrained to approach this Court. Interestingly, he then offered that his client is willing to pay maintenance to the respondents, however, to a lesser figure; and prayed that this Petition be thus allowed.

12. Sri.T.Ramesh Babu explained that, going by the evidence on record, it becomes luculent that his client is only an employee of a shop run by his brother; and that he is not even earning the amount that has been ordered to be paid to the respondents. He then asserted that, since his client is now remarried with another child and being in the charge of his aged mother, his entire income cannot be used to pay maintenance to the respondents. He thus prayed that this Revision

Petition be allowed.

13. However, in response, Sri.Abdul Raoof – learned counsel for the respondents, argued that it has been well settled, by catena of judgments of this Court and that of the Hon'ble Supreme Court, that an able bodied man cannot cite lack of resources to honour essential maintenance to his wife and children. He predicated that it will be a different case altogether, if the man is incapacitated from earning; but that, in this case, there is not even a whisper to such, but only that he is now remarried, with another family to take care of. He contented that when the learned Family Court has granted the bare minimum maintenance to the respondents - which is not even sufficient for their sustenance, the factum of the petitioner not earning enough – even assuming so, for the

sake of argument, would be irrelevant. He concluded, pointing out that the evidence on record unequivocally establishes that the petitioner has a large income; and that his assertion, that his business has closed down, is false and solely a stratagem to avoid his statutory liability.

14. We have examined the order under challenge; and notice that, as rightly argued by Sri.Abdul Raoof, the learned Family Court has only granted Rs.5,000/- per month as maintenance to the 1st respondent – the wife of the petitioner; and Rs.4,000/- each to respondents 2 to 5 - who were all very young children, of ages 12 to 2 years, at the time when it was ordered, in the year 2019. Even now all the children are aged less than 18, with the younger being hardly 7 or 8 years.

15. Therefore, the amount ordered

surely is the least any Court could have granted because, it is unimaginable in these days that a child or an adult can sustain with an amount as low as Rs.5,000/-, or 4,000/-, as the case may be.

16. Axiomatically, when a learned Family Court has granted only the most essential amounts, barely sufficient for mere sustenance of the wife and children, the income of the petitioner would be irrelevant to be taken into account, particularly, when he is, concededly, one without any incapacitation to earn enough. The Hon'ble Supreme Court has clarified this position in ***Rajnesh v. Neha and another*** [(2021) 2 SCC 324], that a man who was no physical ailments or incapability to earn, cannot impel a contention that he does not have enough income to take care of his family, especially when

the children are very young, and have to be educated, with their other unexpendable requirements to be met.

17. As we have already seen above, the children are all school going and their education and other necessities related to it would be difficult, if not impossible, without at least the amounts now awarded. Add to this, the requirements of food, medicines and other basic requirements effectively render the above said amounts rather exiguous, if not, insufficient.

18. Even with the afore being so, we have analysed the evidence on record, to verify if any mistake has been committed by the learned Family Court; and, as will presently explain, we find otherwise.

19. The testimony of the petitioner, as PW1, is that he was conducting a business

earlier, but which was closed down and he has produced certain documents in evidence, to establish that his business has been so closed. He then added that he is now working as an employee under his brother, who is running his own business; and hence that he is not earning enough. No doubt, PW2 - who is a brother of PW1, spoke to the afore effect; but we notice that the learned Trial Court did not accept it because, Exts.A12 to A16 documents speak a contrary version. This view is justified since, Exts.A16 and A16(a) are the Muster Rolls of the business maintained by the petitioner; while, Ext.A17 series are the photographs of the same. Further, the version of PW2 is that his business was earlier conducted by his father; and that after the latter's demise the license was transferred to his mother and then to his name. This was

sought to be proved by PW3; but the learned Trial Court rightly saw that the said documents are of the assessment year 2019-20.

20. Interestingly, Ext.B13 - visiting card still shows that PW1 is running his business; and therefore, the learned Family Court expressed suspicion on the further deposition of PW3, that the petitioner was working in the shop as an employee. This suspicion, in our considered view, is well founded because, Ext.B14 card issued by the "Kerala Vyapari Vyavasayi Ekopana Samithi" and Ext.B15 – license, go the way to render the version of PW1 untenable.

21. The evidence on record, as has been correctly assessed by the learned Trial Court, indicate to a great extent, if not conclusively, that the petitioner is running a

business in his own name; and, in any event, even assuming *ex arguendo*, that the petitioner's assertion - that he is working as a Manager in the business of his brother - is accepted, his further avowal that he is earning only Rs.22,000/-, per month, remains without any corroboration.

22. Be that as it may, as we have indited above, the question relevant is not whether the petitioner is earning enough, but if the maintenance offered to the respondents is excessive, or beyond what they essentially require. The amounts now granted vide the order of the learned Family Court dated 30.11.2019, is undoubtedly the minimum required to exist and sustain, much less to live well with dignity. When the quantum fixed is so low, which is the absolute minimum that

any husband or father can be asked to foot, we see no reason why we should even consider the evidence as to his earning capacity, particularly when he does not have a case that he is physically or otherwise incapacitated from earning enough.

23. Pertinently, the primary focus of the argument of the petitioner is that he has another family, because he chose to marry again and have a child in it; and hence that he cannot spend his income for the benefit of the respondents herein alone. It is needless to say that such an argument can never find favour with us because, it was the choice of the petitioner to marry again and have another family; and surely he should, therefore, be bound to its consequences and cannot be allowed to resile from his obligations to the respondents herein.

In the afore circumstances, we see no reason to interfere and therefore, dismiss this Revision Petition.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B. SNEHALATHA

JUDGE

SAS/MC