
(2007) 09 KL CK 0056
In the High Court Of Kerala
Case No : Mat Appeal No. 112 of 2007

Belcita Vincent Gomez

APPELLANT

Vs

Vincent Gomez

RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Citation : (2007) 09 KL CK 0056

Hon'ble Judges : Kurian Joseph, J; Harun-UI-Rashid, J

Bench : Division Bench

Advocate : Roy Chacko, for the Appellant; No Appearance, for the Respondent

Judgement

Harun-UI-Rashid, J.—The plaintiff in O.S. No. 264/2003 on the file of the Family Court, Kollam, is the appellant herein. The parties are referred to as the plaintiff and the defendant. The Family Court, Kollam passed a decree allowing the plaintiff to realise the monthly maintenance at the rate of Rs. 1500/- from the defendant and his assets from 1.7.2000 onwards. In addition to the said amount, a sum of Rs. 20,000/- was also allowed to be realised from the defendant towards medical expenses. The plaintiff is aggrieved by the inadequacy of the amount fixed towards the monthly maintenance.

2. The case of the plaintiff is as follows: The plaintiff and the defendant were married on 5.12.1974 in accordance with the Latin Catholic rites and rituals. Three daughters were born out of the wedlock. After some years of marriage, the respondent went to Gulf country in search of better avenues in life. Originally he was employed in an automobile workshop in Gulf. Subsequently he started his own unit and the unit flourished and substantial income was earned by him. Gradually the defendant began to neglect her without providing anything to her for her sustenance and maintenance. Towards the end of 1994 the respondent had an affair with his sister-in-law. Though resisted by the plaintiff, the illegal relationship with the said person continued. Finding that the husband failed to change his ways, the plaintiff has no other alternative other than to dissociate herself from her husband, and therefore, she left U.A.E. and came to Kollam on

24.12.2000 and started residing in a small rented house with the help of her sister.

3. The children were not allowed to go with the plaintiff and on account of his wealth and big contacts, he was able to retain the custody of them. The defendant got married two of the daughters without intimation to the plaintiff. The plaintiff filed O.P. No. 22/2002 for divorce. The divorce petition was allowed by the Family Court, Kollam by judgment dated 3.2.2005. The present application for maintenance and for realisation of treatment expenses incurred by her was filed since she was unable to maintain herself. The plaintiff sought for the relief of Rs. 20,000/- per month for the period from 1.7.2000 i.e. the date she was sent out from the respondent's home at U.A.E. till 1.7.2003, the date of the petition, and for future maintenance.

4. The husband is quite well off. He is earning fabulous amounts per month from his automobile business. The income of the husband per day is Rs. 1 lakh from the automobile garage owned by him exclusively dealing with Benz cars.

5. The defendant entered appearance in the proceedings, but absented himself. Accordingly he was set ex parte. The plaintiff filed proof affidavit in support of the allegations in the petition for maintenance which was not controverted in cross-examination. The Family Court, without detailed discussion, granted maintenance at the rate of Rs. 1500/- per month and Rs. 20,000/- towards the expenses incurred by the plaintiff for her medical treatment. The plaintiff filed this appeal challenging the inadequacy of the amount awarded towards maintenance. In the proof affidavit filed by the plaintiff, she has averred that her husband is a very rich person earning fabulous amounts per month. He is conducting an automobile garage exclusively dealing in Benz cars. Pending this appeal the appellant produced the deposition of the respondent in the case between the parties numbered as O.S.203/2001 pending before the same court and is produced as Annexure A1 along with I.A. No. 1482/2007. In Annexure A1 deposition the respondent/husband admitted that he is getting more than Rs. 3.25 lakhs per mensem as income from his business. He also admitted that he had purchased several valuable properties during the past few years out of the income he derived from his business in Gulf.

6. He also admitted that for the first daughter's marriage he gave 200 sovereigns of gold and Rs. 2 lakhs as gift apart from incurring the expenses for the marriage. For the second daughter also he gifted 150 sovereigns of gold and Rs. 6 lakhs at the time of marriage. He also spent several lakhs of rupees for the purchase of movables and immovables, according to him. All these facts and circumstances lead to the inference that he is a person capable of spending several lakhs of rupees for the needs of his family. The appellant/plaintiff was his wife and she was also leading a family life along with him. The grant of Rs. 1500/- per month by the Family Court is a too low amount considering the status of the parties and their needs. The learned Sub Judge did not discuss either the need of the appellant/plaintiff, nor the capacity of the respondent to spend

amounts for the maintenance of his wife. Considering the financial position of the husband, we are of the view that Rs. 20,000/- per month is only reasonable and fair. Moreover, the proof affidavit filed by the appellant/plaintiff was not controverted in cross- examination. Before this court also the husband did not contest the matter. This will lead to the fact that the respondent/husband has no objection in granting the relief sought for by the appellant/plaintiff.

7. In the circumstances, we are of the view that the plaintiff is entitled to a monthly maintenance of Rs. 20,000/- from 1.7.2000 i.e. the date from which the appellant/plaintiff started living separately, till 3.2.2005, the date on which the decree for divorce was passed in O.P. No. 22/2002. Accordingly, the judgment and decree under appeal are modified and the plaintiff is allowed to realise monthly maintenance at the rate of Rs. 20,000/- from the defendant and his assets from 1.7.2000 to 3.2.2005. The plaintiff is at liberty to approach the Family Court seeking reliefs for other benefits as provided under the provisions of the Indian Divorce Act, if so advised. There will be no order as to costs.