

(2012) 03 KL CK 0152

In the High Court Of Kerala

Case No : OP (FC) No. 591 of 2012 (R) and IA. No. 2479 of 2011 in OS. 230 of 2003

D.N. Ranjeevan and Others

APPELLANT

Vs

Purnami Raj and P.R. Raju

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 23

Citation : (2012) 03 KL CK 0152

Hon'ble Judges : M.L. Joseph Francis, J;K.M. Joseph, J

Bench : Division Bench

Advocate : K.P. Satheesan, Sri. M.R. Jayaprasad, Sri. P. Mohandas Ernakulam and Sri. Anoop V. Nair, for the Appellant; R. Kishore, Sri. G. Hariprasad and Sri. Arun Babu for R1, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, J.—The petitioner has approached this Court against Ext.P4. By Ext.P4 order, the Family Court, Kollam has refused to accept the security offered by the petitioners, having an extent of 2.18 ares of property as sufficient security.

2. We heard learned counsel for the petitioners and learned counsel appearing for the first respondent and also for second respondent.

3. The petitioners have offered an extent of 2.18 ares of property, as already mentioned, but the Family Court did not accept the security apparently for the following reasons:

(i) The valuation certificate of the property and building situated therein has not been produced by the petitioners.

(ii) The value, according to the respondents, is only Rs. 5,00,000/- and according to the petitioners, it is Rs. 40,00,000/-.

(iii) The affidavit is sworn to by the fourth defendant/petitioner, when the

property belongs to the second defendant/petitioner.

(iv) The petitioners themselves admitted that there is encumbrance of Rs. 1,00,000/- over the property created by the Co-operative Urban Bank, Kollam and no document is produced to show the balance outstanding due to the bank.

(v) Petitioners admitted that no tax is being paid for the property. Reference was made to another attachment obtained on 21.5.2011 by one Bindulekha, which was suppressed by the fourth defendant/petitioner.

4. Learned counsel for the petitioners would submit that as far as the encumbrance of Rs. 1,00,000/- to the Co-operative Urban Bank, Kollam is concerned, the petitioners have cleared the liability. Further, it is submitted that they were not in a position to produce the valuation certificate for the reason that the Tahsildar has directed the petitioners to produce the Court certificate. Learned counsel for the petitioners does not dispute that there is lapse on the part of the petitioners in not obtaining and producing the Court certificate, on the strength of which the valuation certificate could not be produced. But according to the petitioners, valuation of the land and building would be Rs. 19,00,000/-. It is further submitted that as far as the attachment obtained by Smt. Bindulekha is concerned, it is not obtained in any particular sum.

5. We called for a report from the Judicial First Class Magistrate Court, Neyyattinkara. By that report, the Magistrate informed us that M.C. No. 30 of 2011 is a petition u/s 23 of the Protection of Women from Domestic Violence Act filed by Smt. Bindulekha, wife of the first petitioner. Further it is reported that the petitioner in the M.C., had expressed an apprehension that the property owned by the first petitioner will be disposed of in order to defeat any order that may be passed by the learned Magistrate and therefore she had sought for an order of attachment. It is further informed that the attachment is not with reference to any other amount fixed by the Court.

6. Still further, learned counsel for the petitioners would submit that the petitioners are prepared to offer 3 cents of property comprised in Anchallamoodu also as security, in addition to 2.18 ares of land, which is already offered as security.

7. We feel that an opportunity must be given, in the interests of justice, and the matter must be re-considered. Accordingly we direct that the Family Court, Kollam will consider the matter afresh, particularly, in the light of the submission that the petitioners will offer 3 cents of property more. The parties will appear before the Judge in charge of the Family Court, Kollam on 15.3.2012. It is for the petitioners to produce the valuation certificate. Also they may produce documents to show that the encumbrance in favor of the Urban Co-operative Bank, Kollam has been discharged as also other documents, which are necessary for the purpose of the Court to consider the sufficiency of the security. A decision will be taken by the Family Court within a period of one month from 15.3.2012. It is for the petitioners to move for the issuance of Court certificate, so that the

valuation certificate can be produced. For the purpose of passing fresh order, we set aside Ext.P4 order.