

respondent wife's alleged impotency dismissed – Counter claim by respondent wife for restitution of conjugal rights upheld – Awarded compensation and maintenance by Family Court, Kollam. [Para 1-3]

Marital Torts and Compensation – Allegations of impotency and unknown disease against respondent wife deemed false, baseless, and defamatory – Entitlement of the victim to general damages for injuries sustained – Quantum of compensation and maintenance reviewed and modified. [Para 5-6, 10-11]

Assessment of Maintenance and Compensation – Consideration of income, assets, and living standards of parties – Monthly maintenance of Rs.10,000/- upheld, but compensation for marital tort reduced from Rs.10,00,000/- to Rs.5,00,000/-. [Para 7-8, 11]

Retroactive Maintenance – Past maintenance rate modified from Rs.10,000/- to Rs.5,000/- per month for the period from 01.11.2003 to 30.10.2006, considering respondent wife's initial claim. [Para 20-22]

Final Decision – High Court modifies the trial court's judgment regarding compensation and past maintenance – Appeals allowed in part, without cost. [Para 23]

Referred Cases:

- Rajnesh v. Neha and another [(2021) 2 SCC 324]
- RD v. BD [2019 SCC Online Del 9526: (2019) 7 AD 466]

Representing Advocates:

For Appellant: Sri.V.T.Madhavanunni, Sri.Grashious Kuriakose Sr., Sri.V.A.Satheesh

For Respondent: Sri.K.N.Chandrababu, Shri.S.Ganesh, T.Krishnanunni (K-197), Sri.P.Sivaraj for Caveator

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 10.11.2023, ALONG WITH Mat.Appeal NO. 170/2016, THE COURT ON 16.11.2023 DELIVERED THE FOLLOWING:

P.B. SURESH KUMAR & JOHNSON JOHN, JJ.

Mat.Appeal Nos.170 & 223 of 2016

November, 2023.

Dated this the 16th day of

JUDGMENT

Johnson John, J .

The appellant filed O.P. (HMA) No. 342 of 2003 before the Family Court, Kollam under Sections 12(1)(a) and 13 of the Hindu Marriage Act, 1955 ('Act, 1955' for short) to dissolve the marriage on the ground that the respondent wife is impotent and their marriage never consummated. The respondent wife denied the same and it is contended that the allegations are false and that she has not suffered from any disease and she also filed a counter claim for restitution of conjugal right stating that she is ready for re-union and also to discharge her duties towards the petitioner.

2. The respondent wife has also filed O.S. No. 380 of 2006 before the Family Court, Kollam seeking compensation and maintenance under Section 18 of the Hindu Adoption and Maintenance Act r/w Section 7 of the Family Court Act, 1984 *inter alia* alleging marital torts on the ground that in O.P (HMA) No. 342 of 2003 filed by the appellant husband, he made false, baseless and defamatory allegations that the respondent wife is impotent and suffering from some unknown disease. The respondent wife claimed Rs.10,00,000/- as compensation and monthly maintenance at the rate of Rs.10,000/- per month in the said suit.

3. As per the common judgment dated 24.11.2015 in O.P. (HMA) No. 342 of 2015 and O.S. No. 380 of 2006, the court below dismissed O.P.(HMA) No. 342 of 2003 and allowed the counter claim and also decreed O.S. No. 380 of 2006 allowing the respondent wife to realise Rs.10,00,000/(Rupees Ten Lakhs only) as compensation and Rs.10,000/(Rupees Ten Thousand) per month as maintenance and also past maintenance at the rate of Rs.10,000/- (Rupees Ten Thousand) from 01.11.2003 to 30.10.2006 from the appellant husband and his assets with cost.

4. Heard the learned counsel for the appellant husband and the learned counsel for the respondent wife.

5. At the time of hearing, the learned counsel for the appellant submitted that he is confining his arguments regarding the illegality on the quantum of compensation and maintenance awarded by the court below and not pressing the other contentions in the respective appeals. The learned counsel for the appellant argued that the court below has not considered the income and living conditions of the parties before fixing Rs.10,000/- as monthly maintenance, and further the court below has also not given any reasons for awarding Rs.10,00,000/- as compensation to the respondent wife.

6. But, the learned counsel for the respondent wife pointed out that the court below has considered the evidence of the respondent wife regarding the assets and income of the appellant and their living conditions for fixing Rs.10,000/- as maintenance. It is further argued that the court below fixed Rs.10,000,00/- as compensation for general damages after recording a finding that the appellant husband has made false, baseless and defamatory allegations against the respondent wife that she is impotent and suffering from some unknown disease as grounds for dissolution of marriage in O.P. (HMA) No. 342/2003, and in such a situation, the victim is entitled to general damages for the injuries sustained by her.

7. It is pertinent to note that in paragraph 8 of the plaint in O.S. No. 380 of 2006, the plaintiff wife has narrated the assets of the defendant husband and in the said paragraph, it is stated that the defendant is conducting 'Malappuram Steel Industries' and he is earning a monthly income of Rs.8,00,000/- and in addition, he owns certain properties enumerated in sub-clauses (a) to (k) in the said paragraph.

8. The respondent wife, when examined as RW1, has also deposed more or less in the same way regarding the monthly income and assets of her husband and therefore, considering the income, assets and living standards of the parties as in evidence, we find that the court below rightly fixed Rs.10,000/- (Rupees ten thousand only) as monthly maintenance and there is no reason to interfere with the same.

9. The learned counsel for the appellant pointed out that the court below only recorded a finding that the averments made by the appellant husband in O.P. (HMA) No. 342 of 2003 regarding the impotency and unknown disease of the wife, are false, baseless and defamatory, and that the respondent wife has no case that her husband made such allegations in

public or to others. But, the learned counsel for the respondent wife pointed out that the appellant husband has made slanderous and malicious statements in the petition seeking dissolution of marriage and that such slanderous and malicious statements were made before the public officers and in public and therefore, there is no reason to interfere with the findings of the court below regarding the quantum of compensation.

10. It is true that there is no formulated rule or guideline to measure damages in the case of marital tort and that in case of any other tort, the quantum of damages ought to be fixed at a sum, which will compensate the victim, so far as money can do it, for the injury she had suffered. It cannot be disputed that the victim is entitled for general damages, which the law will presume to be natural and probable consequences of the wrongful act.

11. It is true that the court below has not discussed the nature of the injury suffered by the respondent wife. But, at the same time, it is to be noted that when it is established that the tortfeasor is guilty of the wrongful act complained of, it will be presumed that the victim has sustained some damage and the amounts he will be entitled is purely in the discretion of the court. In the absence of any evidence to show that apart from making the above false, baseless and defamatory allegations in the petition seeking dissolution of marriage, and since the respondent wife has no case that her husband made such allegations in front of others, such as her relatives or friends causing her defamation, emotional distress or mental pain, we find that the compensation fixed by the court below is on the higher side and that the same requires to be reduced. Accordingly, the compensation awarded by the court below is reduced to Rs.5,00,000/-.

12. The learned counsel for the appellant has invited our attention to paragraph 15 of the written objection filed by the respondent in O.P (HMA). No. 342 of 2003, wherein it is stated as follows:

“There is absolutely no ground for allowing this petition. The petitioner is liable to pay alimony at the rate of not less than Rs.5000/- per month and also Rs.3000/- for litigation expenses for which the respondent had already filed a petition which is pending consideration of this Hon'ble Court. Apart from this, the respondent also reserves a right to file a suit for getting compensation from the petitioner.”

13. The learned counsel for the appellant argued that in spite of the above averments in the written objection, the court below awarded monthly maintenance at the rate of Rs.10,000/- per month, ignoring the fact that the respondent herself has claimed only Rs.5000/- per month as alimony in the

written objection. It is pertinent to note that the court below awarded monthly maintenance at the rate of Rs.10,000/- per month as per the decree in O.S. No. 380 of 2006 filed by the respondent wife.

14. So, the question that arises for consideration is asto whether the respondent wife can seek an enhanced amount as maintenance in a subsequent suit filed after three years.

15. In ***Rajnish v. Neha and another*** [(2021) 2 SCC 324, the Hon'ble Supreme Court, after considering the provisions of law which provides for claiming maintenance under different statutes, held as under:

“55. The issue of overlapping jurisdictions under the HMA and D.V. Act or Cr.P.C came up for consideration before a Division Bench of the Delhi High Court in RD v. BD [2019 SCC Online Del 9526: (2019) 7 AD 466] wherein the Court held that maintenance granted to an aggrieved person under the D.V. Act, would be in addition to an order of maintenance under Section 125 Cr.P.C, or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paras 16 and 17 of the judgment, it was observed that: (SCC Onlie Del)

16. A conjoint reading of the aforesaid Sections 20, 26 and 36 of DV Act would clearly establish that the provisions of DV Act dealing with maintenance are supplementary to the provisions of other laws and therefore maintenance can be granted to the aggrieved person (s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 of Cr.P.C.

17. On the converse, if any order is passed by the Family Court Under Section 24 of HMA, the same would not debar the Court in the proceedings arising out of DV Act or proceedings under Section 125 Cr.P.C instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance has been passed by any court then the same cannot be re-adjudicated upon by any other court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 Cr.P.C as well as Section 20 of DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said

order would debar re adjudication of the issue of maintenance in any other Court.

(emphasis supplied)”

16. We find force in the argument of the learned counsel for the respondent wife that merely because the wife claimed only Rs.5000/- as alimony, in the written objection in O.P. (HMA) No. 342 of 2003, the same would not debar her from claiming an enhanced amount as maintenance in a subsequent civil suit on the basis of the financial condition and living standards of the parties.

17. It is well settled that there is no straitjacket formula for fixing the quantum of maintenance to be awarded. The court is required to consider the status of the parties; reasonable needs of the wife and dependant children; whether the applicant has any independent source of income; whether the wife was required to sacrifice her employment opportunities for nurturing the family; the financial capacity of the husband; and his actual income. The court is required to draw a careful and just balance between all relevant factors. It cannot be disputed that the test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. It is also well settled that the maintenance amount awarded must be reasonable and realistic and that the same should neither be extravagant, nor should it be so, meagre that it drives the wife to penury.

18. In the case at hand, the court below awarded the monthly maintenance at the rate of Rs.10,000/- per month after considering the financial capacity of the husband and the standard of living of the parties and therefore, considering the facts and circumstances, we find that monthly maintenance at the rate of Rs.10,000/- per month granted by the court below is reasonable and realistic.

19. The next question to be considered is whether the past maintenance allowed at the rate of Rs.10,000/- per month for the period from 01.11.2003 to 30.10.2006 by the trial court is reasonable and justifiable in the circumstances of the case.

20. The learned counsel for the appellant argued that the court below ought to have considered the fact that the respondent wife claimed only Rs.5000/- per month as alimony in her counter claim to O.P (HMA) No. 342 of 2003 filed on 03.11.2003 and therefore, the court below is not justified in granting past maintenance at the rate of Rs.10,000/- per month for the period from 01.11.2003 to 30.10.2006.

21. We find force in the argument of the learned counsel for the appellant that since the respondent wife has claimed only Rs.5000/- per month as maintenance as on 03.11.2003, the trial court ought to have considered the said fact while fixing the past maintenance as on 03.11.2023 claimed for the period from 01.11.2003 to 30.10.2006 and that the past maintenance allowed at the rate of Rs.10,000/per month for the said period by the trial court is on the higher side and the same requires interference of this Court.

22. In view of the averments in paragraph 15 of the counter claim filed by the respondent wife in O.P.(HMA) No. 342 of 2003 and considering the facts and circumstances of the case, we find it appropriate to modify and fix the past maintenance for the period from 01.11.2003 to 30.10.2006 at the rate of Rs.5000/- (Rupees Five Thousand only) per month.

23. Accordingly, the compensation awarded by the court below for marital tort is reduced to Rs.5,00,000/(Rupees Five Lakhs only) and the past maintenance awarded by the court below for the period from 01.11.2003 to 30.10.2006 is reduced to Rs.5000/- (Rupees Five Thousand only) per month. In the result, the impugned judgment is modified to that extent alone and the appeals are allowed in part, without cost.

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