

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF NOVEMBER, 2017

BEFORE

THE HON'BLE MRS. JUSTICE B.V. NAGARATHNA

RPFC No.189 OF 2016

C/W

RPFC No. 101 OF 2016(C.MISC.)

IN RPFC No.189 OF 2016

Between:

Ashok Kumar K.,
S/o. Krishnegowda
Age: 38 years, R/o. Kyathanahalli,
D.No.285, Y.N.Koppal Road,
Pandavapura Taluk,
Mandya District - 571427

Presently working as Assistant Manager,
Tata Consultancy Service,
N.K.P.Guregaon, Mumbai.

... Petitioner

(By Sri. H.C.Shivaramu, Advocate)

And:

S.M.Sharmila Rani,
W/o. K. Ashok Kumar,
Age: 29 years, D/o. S.D.Munidevegowda,
R/o. Near Sacred Heart School,
Gedlahalli Road, Upparahalli,
Tumkur-572101.

.. Respondent

(By Sri. G.M.Chandrashekar, Advocate)

This RPFC is filed under Section 19(4) of the Family Courts Act, against the judgment and decree dated 22.12.2015 passed in C.Misc.No.24/2015 on the file of the Principal Judge, Family Court, Tumkuru, partly allowing the petition filed under Section 125 of Cr.P.C. for maintenance.

IN RPFC No.101 OF 2016

Between:

S.M.Sharmila Rani,
W/o. K. Ashok Kumar,
Age: 30 years,
D/o. S.D.Munidevegowda,
R/o. Near Sacred Heart School,
Geddalahalli Road,
Upparahalli,
Tumkur-572106.

... Petitioner

(By Sri. G.M.Chandrashekar, Advocate)

And:

K. Ashok Kumar,
Aged about 37 years,
Occ: Assistant Manager,
TCS Company, Nirlon STP Mumbai,
R/at. Y.N.Koppal Road,
Kyathanahalli,
Pandavapura Taluk,
Mandya District 571 141.

.. Respondent

(By Sri. H.C.Shivaramu, Advocate)

This RPFC is filed under Section 19(4) of the Family Courts Act (wrongly mentioned as under Section 125 of the Family Courts Act), against the judgment and decree dated 22.12.2015 passed in C.Misc.No.24/2015 on the file

of the Principal Judge, Family Court, Tumkuru partly allowing the petition filed under Section 125 of Cr.P.C. for maintenance and to modify the maintenance at the rate of Rs.50,000/- per month from the date of petition till her lifetime in place of Rs.15,000/- per month from the date of petition till her lifetime.

These RPFCs coming on for Admission, this day, the Court made the following:

ORDER

Both these petitions are listed for Admission. With the consent of learned counsel on both sides, they are heard finally.

2. RPFC No.189/2016 is filed by the husband while RPFC No.101/2016 is filed by the wife, both assailing judgment dated 22-12-2015 passed in C.Misc.No.24/2015 by the Principal Judge, Family Court at Tumkuru.

3. The wife filed the petition under Section 125 of Criminal Procedure Code, 1973 (Cr.PC) against the husband seeking maintenance of Rs.50,000/- per month. According to her, the marriage between the parties was solemnized on 09-03-2014 at Mandya as per Hindu customs and rituals; that the husband and his parents had

demanded dowry. That after marriage, the wife lived with the husband at his residence at Kyathanahalli for a period of two and half months only. Thereafter, the husband went to Mumbai. In spite of repeated requests he did not take his wife to Mumbai. He thereafter visited his native place only twice. That on the instigation of his mother, the husband ill-treated his wife and harassed her. The wife has also contended that her husband's family ill-treated her and threw her out of the house and she has taken shelter in her parents house. That she was working as Head of Department in Physics in Bairanayakanahalli College, but on the direction of her husband, she resigned her job. Several panchayaths were convened for reunion of the petitioner and the respondent but it went in vain. The husband issued legal notice to his wife on 12-11-2014, but the same was not served on her. That on 07-01-2015 he issued another notice to her for restitution of conjugal rights. But the wife got registered a criminal case in Cr.No.22/2015 against her husband and family members for the offences punishable under Sections

498-A, 323,504 and 506 read with Section 34 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act. That the husband has also filed a petition before the Civil Judge, Pandavapura, for restitution of conjugal rights. Contending that the husband neglected to maintain her, the wife filed the petition seeking maintenance by averring that her husband is working as Assistant Manager in TCS Company and earning salary of rupees one lakh per month.

4. From the impugned judgment, it is noted that the respondent/husband was served and inspite of service of notice, he remained absent, he was therefore, placed *exparte*.

5. Wife let-in her evidence as PW1 and produced seven documents which are marked as Exs.P1 to P7. Obviously, the husband who did not appear before the Trial Court did not file any statement of objections nor let-in his evidence.

6. After considering the evidence of the wife, the Trial Court has awarded maintenance of Rs.15,000/- per month to her from the date of petition till her lifetime.

7. Being aggrieved by that order, the husband has preferred RPF No.189/2016 and, seeking enhancement in maintenance the wife has preferred RPF No.101/2016.

8. I have heard learned counsel for the parties at length and perused the material on record.

9. It is noted that the parties have been involved in other legal proceedings apart from the proceeding filed by the wife under Section 125 of Cr.P.C. It is also not in dispute that the husband is working at Mumbai and wife is at Tumkuru with her parents. The contention of learned counsel for petitioner/husband is that notice of the proceeding instituted by the wife under Section 125 of Cr.P.C., was not served on him. He was erroneously placed exparte. In the circumstances, he was unable to file statement of objections to the petition nor contest the

petition and that the principles of natural justice have been violated in the instant case. He therefore, submits that the impugned order may be set aside. Learned counsel further submits that the quantum of maintenance of Rs.15,000/- per month from the date of petition till life time of the wife is also exorbitant and incorrect.

10. Per contra, learned counsel for the respondent/wife submits that the award of maintenance is on the lower side; that having regard to the status of the wife and the earnings of the husband, the Trial Court ought to have awarded a higher maintenance. He submits that the petitioner/husband deliberately did not appear in the proceeding despite service of notice and that the trial court is justified in placing him exparte. He therefore, submits that the petition filed by the husband may be dismissed and the petition filed by the wife may be allowed and the award of maintenance may be enhanced.

11. Having heard learned counsel for the parties and on perusal of the material on record, it is noted that while

considering the evidence of PW1, the wife, the Trial Court has noted that the notice of the proceeding was sent to the husband to his address at his native place, but the same was returned unserved with an endorsement that he had left the address. The Trial Court has also noted that notice directed to his workplace and the same has been returned as 'refused to receive the notice' and that the said endorsement is in Marathi language. The Trial Court presumes that the endorsement in Marathi language on the registered post means 'refused to receive the notice' without there being any indication as to who has certified the endorsement in Marathi language made on the postal cover as 'refused to receive the notice'. It appears that the Trial Court has assumed that the endorsement in Marathi language to mean 'refused to receive the notice' without ascertaining the correct translation of the said endorsement in the Marathi language. Therefore, the Trial Court assumed that there was service of notice of the proceeding on the husband and on his remaining absent, he was placed ex parte. In the absence of there being any

correct translation of the endorsement in Marathi language produced before the Court in accordance with law, the Trial Court could not have assumed the endorsement in Marathi language to mean 'refused to receive the notice'. It is not known what that endorsement in Marathi language was in the absence of there being any evidence let in on the said endorsement before the court by PW1 or through any other witness. In the circumstances, it is held that the assumption and presumption of the Trial Court that the petitioner/ husband had been served and despite service of notice, he remained absent and thereby placing him *ex parte* is erroneous.

12. What follows is, the petitioner/ husband has not filed statement of objections to the petition nor has he participated in the proceeding by cross examining the wife or let in any evidence in support of his case. The entire proceeding being one sided and without there being contest to the petition filed by the respondent/wife, I find that the impugned judgment is not in accordance with

law. On that short ground alone, the impugned judgment is set aside. The matter is remanded to the Trial Court for fresh adjudication after giving an opportunity to the petitioner/husband to file his statement of objections to the petition filed by the respondent/wife. As both the parties are represented by their respective counsel, they are directed to appear before the Trial Court on **2nd December 2017** without expecting any separate notice from that Court.

On that day or any other date which is stipulated by the Trial Court, the petitioner/husband shall file his statement of objections to the petition filed by the wife.

The Trial Court shall dispose of the petition in accordance with law, after giving both parties an opportunity to let in evidence/further evidence in the event they desire to do so by redetermining the award of maintenance sought by the wife.

In the result, RPFC No.189/2016 is allowed and RPFC No.101/2016 is dismissed.

Parties to bear their respective costs.

Sd/-
JUDGE

tsn*