

**IN THE HIGH COURT OF KARNATAKA AT  
BANGALORE**

ON THE 10<sup>TH</sup> DAY OF JANUARY, 2014

BEFORE

**THE HON'BLE MR JUSTICE K L MANJUNATH**

**AND**

**THE HON'BLE MR JUSTICE RAVI MALIMATH**

Miscellaneous First Appeal No. 10264 of 2010 (FC-DB)

C/w

RPFC No. 125 of 2010

**IN MFA NO. 10264/10**

**BETWEEN:**

SRI S NAGARAJ  
S/O SHIVANNA  
AGED ABOUT 46 YEARS  
R/O D.NO. 785, BOGADI NORTH 2<sup>ND</sup> STAGE,  
MYSORE - 570 026 ... APPELLANT

[By Sri C V Sheelvant, Adv.]

**AND:**

SMT K SHASHIKALA  
W/O S NAGARAJ  
AGED ABOUT 42 YEARS  
R/AT D.NO. 785,  
BOGADI 2<sup>ND</sup> STAGE,  
MYSORE - 570 026 ... RESPONDENT

[By Sri P N Manmohan, Adv.]

THIS APPEAL IS FILED UNDER ORDER 41 RULE 1 OF CODE  
OF CIVIL PROCEDURE R/W SECTION 19(1) OF THE FAMILY  
COURTS ACT, AGAINST THE JUDGMENT AND AWARD DATED

29.10.2010 PASSED IN M.C. NO. 328/2007 ON THE FILE OF THE JUDGE, FAMILY COURT, MYSORE, DISMISSING THE PETITION FILED U/S 13 1(1a) & (1b) OF HINDU MARRIAGE ACT FOR DIVORCE AND ETC.,

**IN RPFC NO. 125/10**

**BETWEEN:**

SRI S NAGARAJ  
S/O SHIVANNA  
AGED ABOUT 46 YEARS  
R/O D.NO. 785,  
BOGADI NORTH 2<sup>ND</sup> STAGE,  
MYSORE - 570 026

... PETITIONER

[By Sri C V Sheelvant, Adv.]

**AND:**

1. SMT K SHASHIKALA  
W/O S NAGARAJ  
AGED ABOUT 42 YEARS
2. MASTER ABHINANDAN KESHAV  
S/O S NAGARAJ  
AGED ABOUT 14 YEARS  
MINOR, REP. BY R1
3. MASTER ARJUN SRIKRISHNA  
S/O S NAGARAJ  
AGED ABOUT 8 YEARS  
MINOR, REP. BY R1

ALL ARE R/AT D.NO 785,  
BOGADI 2<sup>ND</sup> STAGE,  
MYSORE - 570 026

... RESPONDENTS

[By Sri P N Manmohan, Adv.]

THIS RPFC FILED U/S 19(4) OF THE FAMILY COURTS ACT, 1984, AGAINST THE JUDGMENT AND ORDER DATED 29.10.2010 PASSED IN C.MIS. NO. 325/2006 ON THE FILE OF THE JUDGE, FAMILY COURT, MYSORE, PARTLY ALLOWING THE PETITION FILED UNDER SEC. 125 OF CR.P.C AND ETC.,

THESE MFA AND RPFC COMING ON FOR HEARING, THIS DAY, **RAVI MALIMATH, J.**, DELIVERED THE FOLLOWING:

## **J U D G M E N T**

The marriage between the parties took place on 10-2-1993. At the time of marriage, the wife was working as a technical officer at the Indian Institute of Horticulture and Research at Bangalore and the husband was working as an assistant librarian at the Central Silk Board, Bangalore. After the marriage, they resided together in a rented house at Bangalore. They have two children.

2. The case made out by the wife is that the husband lost interest in continuing the relationship with her and started showing a hostile attitude towards her and the same resulted in frequent quarrels and several incidents of misunderstanding between them. That on the transfer of the husband to Mysore, they shifted their residence to Mysore and the wife and the children joined him. It is her case that in view of constant bickering between the husband and the wife, the relationship between them

soured. It is her further case that, the husband continued to neglect her and was compelling her to accept all the misdeeds. In these circumstances, in view of the hostile attitude, she started to stay away from the marital house for some time; that notwithstanding the same, she returned to the house, but the husband continued his hostile attitude thereafter also.

3. The case of the husband is that she never listened to his advice but in spite of medical advice she continued her week end visits to her mother's house at Mysore even though she was pregnant. The same resulted in abortion. Thereafter she never returned to his house. He was staying alone in the PG accommodation, other than paying rent to the house. Thereafter when she joined him she continued to harass him both mentally and physically. She would force him to do all the daily household works including washing and cooking. She would stay in the house like a guest. That due to this mental torture and cruelty he had no other option but to file a petition for divorce.

4. In these circumstances, the husband filed MC No 328 of 2007 seeking a decree of divorce and the wife filed C Misc 325 of 2006, seeking maintenance. Both the matters were clubbed together and the Family Court heard the matter together and by the impugned order, dismissed the plea of the husband for divorce. However, the petition filed by the wife seeking maintenance was allowed and it was ordered that the wife is entitled for a monthly maintenance of Rs.4,000/- and the two children are entitled to a monthly maintenance of Rs.1,500/- each, from the date of petition till they attain the age of majority.

5. Aggrieved by this common order, the husband has filed MFA No 10264 of 2010 aggrieved by the order refusing to grant a decree of divorce and RPFC No 125 of 2010 is filed aggrieved by the grant of monthly maintenance to the wife and children.

6. Heard learned counsels.

7. Submission of learned counsel for the appellant-husband is that the impugned order is bad in law and liable to be set aside; that his plea for grant for divorce has been rejected on untenable grounds; that the court below failed to appreciate the material facts of the case in a proper perspective; that the husband has made out a case for grant of a decree of divorce; that the impugned order is not tenable and therefore he pleaded for allowing the appeal and the revision petition.

8. After hearing the learned counsel, we do not find any merit in the revision petition. The trial court while considering the plea of the parties was of the view that keeping in mind the income of the husband and the need of the wife and children, it was just and proper to grant Rs 4,000/- in favour of the wife and Rs 1,500/- each in favour of the two children as monthly maintenance. The salary of the husband, after deduction, was Rs 20,702/-. On considering the contentions of the parties as well as the evidence on record, and in view of the fact that the amount

of maintenance awarded by the family court is just and proper and based on the income of the husband, we do not find any error in granting maintenance. Even otherwise, there is no plea by the wife to enhance the amount of maintenance and it seems she is satisfied with the maintenance awarded. In the circumstance, we do not find any ground to interfere with the award of maintenance.

9. In so far as the plea with regard to the grant of divorce by the husband is concerned, we find no error committed by the Family Court that calls for any interference. The plea of the husband has merely remained a plea. He has failed to establish any of the grounds alleged by him. Accordingly narrating his case is of no avail. He would have to lead acceptable evidence. He has failed to do so. He has failed to show that the wife has acted in a cruel manner against him. He has also failed to show that he is entitled for a decree for divorce. Notwithstanding the same, the Family Court has considered all the contentions and the evidence on record.

The order passed by the Family Court is just and appropriate. There are no grounds to grant divorce. We find no error to interfere with the same.

10. Consequently, the appeal and the revision petition are dismissed as being devoid of merits.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

\*pjk