

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.MC.No. 4722 of 2015

**JUDGMENT DTD.1.7.2015 IN CRL. RP. 4/2015 SESSIONS COURT, KASARAGOD
ORDER DATED 5.6.2015 IN C.M.P.1654/2015 IN MC 228/2013 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-II, HOSDRUG**
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PETITIONER(S)/RESPONDENT:

**ABDULLA K.H., AGED 60 YEARS,
S/O HASSAINAR ODOOTH, RESIDING AT MEETHAL MANGAD,
KOLANGAD HOUSE, KALANAD VILLAGE, HOSDURG TALUK,
KASARAGOD DISTRICT.**

BY ADV. SRI.A.ARUNKUMAR

RESPONDENT(S)/COMPLAINANT AND STATE:

- 1. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. SUBAIDA K.M., AGED 41 YEARS,
D/O LATE MUHAMMED, RESIDING AT METHAL MANGAD GOUSE,
P.O.BARA, UDMA VIA, HOSDURG TALUK,
KASARAGOD-671 121.**

**R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R2 BY ADV. SRI.V.TEKCHAND**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD \ON
14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A1: A TRUE COPY OF THE M.C.NO.228 OF 2013 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE-II, HOSDURG.

ANNEXURE AII: A TRUE COPY OF THE PETITION FILED BY THE PETITIONER TO SET ASIDE THE EXPARTE ORDER.

ANNEXURE AIII: A TRUE COPY OF COUNTER FILED BY THE 2ND RESPONDENT.

ANNEXURE AIV: A TRUE COPY OF THE ORDER DATED 5.6.2015 IN CMP NO.1654 OF 2015 IN THE M.C.NO.228 OF 2018 ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE-II, HOSDURG.

ANNEXURE AV: A TRUE COPY OF THE MEMORANDUM OF REVISION PETITION.

ANNEXURE AVI: A TRUE COPY OF THE JUDGMENT DATED 1.7.2015 CRL.R.P.NO.4 OF 2015 OF THE COURT OF SESSIONS, KASARAGOD.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
Crl.M.C. No. 4722 of 2015
.....

Dated this the 14th day of December, 2015

ORDER

M.C.No.228 of 2013 was filed before the Judicial First Class Magistrate's Court-II, Hosdurg seeking maintenance to the wife and three children. Altogether there are five children. One has attained the age of majority and the other one is a mentally retarded. So far, no amount has been paid by way of maintenance. It is quite unfortunate that the 2nd respondent and the children had not sought for interim maintenance in the matter.

2. The petitioner herein, who is the respondent in the M.C., had not cared to appear before the court below after the filing of the counter. According to him, there was a mediation and he was under the impression that the

petitioner in the MC might have withdrawn the MC. It seems that the mediation has failed because the petitioner herein could not arrange a progressive buyer for the property. Whatever it is, it is a reality that no amount has been paid so far.

3. Ultimately, the MC was decided *exparte* and an amount of ₹5,000/- each was ordered to be paid as maintenance to the wife and three children, who have not attained the age of majority. The petitioner had preferred an application for getting the *exparte* order set aside. That application was allowed by the learned Magistrate and the petitioner herein was ordered to deposit half the amount of arrears, as a condition for getting the *exparte* order set aside. Without complying with the said condition, the petitioner preferred Cr.I.R.P. before the Sessions Court, Kasaragod. The said revision was dismissed.

4. At any stretch of imagination, it cannot be said that the condition imposed on the petitioner to get the *exparte*

order set aside by the learned Magistrate, is onerous. The petitioner shall deposit half the amount of arrears of maintenance ordered by the court below as a condition precedent for getting the *exparte* order set aside.

In the result, this Crl.M.C. is dismissed. In case of the petitioner depositing half the amount of arrears of maintenance till date within two months from today, before the court below, the *exparte* order passed by the court below shall stand set aside. If not, the petitioner in the MC can apply for execution of the order passed by the court below.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge