

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

OP(Cr1.).No. 29 of 2015 (Q)

IN MC 61/2003 of FAMILY COURT, CHAVARA

PETITIONER:

ANI, AGED 45 YEARS,
S/O.RAGHAVAN,
RESIDING AT NAREENCHAL PADINJATTATHIL,
THAZHAVA VILLAGE, KARUNAGAPPALLY, KOLLAM DISTRICT.

BY ADV. SRI.V.A.AJIVAS

RESPONDENTS/RESPONDENTS:

1. AMBILI, AGED 38 YEARS,
W/O.ANI, RESIDING AT VETTUVILASERIL VEEDU,
MANAPPALLY VADAKKUM MURRY, PAVUMBA VILLAGE,
KARUNAGAPPALLY, KOLLAM DISTRICT - 690 574.
2. ARUN, AGED 16 YEARS,
S/O.ANI, RESIDING AT VETTUVILASSERIL VEEDU,
MANAPPALLY VADAKKUM MURRY, PAVUMBA VILLAGE,
KARUNAGAPPALLY
KOLLAM DISTRICT. (MINOR REPRESENTED BY 1ST RESPONDENT)
3. AKHILA, AGED 13 YEARS,
D/O.ANI, RESIDING AT VETTUVILASSERIL VEEDU,
MANAPPALLY VADAKKUM MURRY, PAVUMBA VILLAGE,
KARUNAGAPPALLY
KOLLAM DISTRICT. (MINOR REPRESENTED BY 1ST RESPONDENT).
4. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R4 BY GOVERNMENT PLEADER SMT.P.MAYA

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Cr1.).No. 29 of 2015 (Q)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: COPY OF THE ORDER IN M.C.NO. 61/2003 FILED BY THE
RESPONDENT BEFORE THE FAMILY COURT, KOLLAM, DATED 12/11/2004.

EXT.P2: COPY OF THE ORDER OF C.M.P.NO. 63/2010 IN M.C.NO. 61/2003
DATED 31/05/2011.

EXT.P3: COPY OF THE PETITION FILED BY THE RESPONDENT BEFORE THE
FAMILY COURT, CHAVARA, DATED 29/03/2014.

EXT.P4: COPY OF THE PETITION CRL.M.P.NO. 439/2014, FILED BY THE
PETITIONER TO SET ASIDE THE EXPARTE DECREE IN C.M.P.NO. 63/2010.

EXT.P5: COPY OF THE MEDICAL TREATMENT CERTIFICATE FROM THE
PETITIONER.

EXT.P6: COPY OF THE MEDICINE PRESCRIPTION OF PETITIONER'S MOTHER.

EXT.P7: COPY OF THE MEDICINE PURCHASE BILL OF PETITIONER'S
MOTHER.

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

O.P(CrI) No.29 of 2015

Dated this the 11th day of February, 2015

J U D G M E N T

A maintenance order against the petitioner herein under Section 125 of the Code of Criminal Procedure passed by the Family Court, Kollam stands modified under Section 127 of the Code of Criminal Procedure. The said claim made by his wife and children under Section 127 of the Code of Criminal Procedure as C.M.P No.63/2010 was decided ex-parte by the Family Court on 31.5.2011. Now the petitioner's wife and children have brought execution petition, and it appears that there is warrant of arrest against him. An application filed by the petitioner to set aside the ex-parte order is pending consideration. There is also an application to condone the delay in filing the application to set aside the ex-parte order. Now the petitioner seeks orders from this Court under Article 227 of the Constitution of India directing the court below to keep the Ext.P3 execution proceeding in abeyance, and to dispose of the petitioner's applications at the earliest.

2. The first order against the petitioner, made under Section 125 of the Code of Criminal Procedure by the Family Court is for maintenance to the wife at the rate of ₹350/- pm. and to the two children at the rate of ₹300/- each pm. Now the maintenance in favour of the wife stands enhanced to ₹ 3,500/- and the maintenance in favour of the children stands enhanced to ₹3,000/- each pm. The first child must be now aged 16 years and the second child must be now aged 14 years. Anyway, let the petitioner's application to set aside the ex-parte order be considered by the trial court at the earliest. There is now report from the Family Court that the petitioner's application stands posted to 6.3.2015 for hearing. When the petitioner is very much aggrieved the applications will have to be disposed of by the Family Court within a short period. No doubt, it can be disposed of by 31.3.2015. In the special circumstances, the learned Family Court Judge can think of imposing certain conditions including deposit of fraction of the amount now due from the petitioner, as a condition for setting aside the ex-parte order. Once the order is set aside on conditions, the petitioner will not have anything to worry regarding the execution proceeding. Anyway, in the interest of justice the execution

proceedings can be suspended till decision is taken by the learned Judge on the petitioner's applications to set aside the ex-parte order. In the result, this Original Petition is disposed of as follows:

a) The learned trial Judge will decide the petitioner's application to set aside the ex-parte order by 31.3.2015.

b) The learned trial judge can think of imposing appropriate conditions, including deposit of a substantial fraction of the amount of maintenance due from the petitioner as a condition to set aside the ex-parte order.

c) The execution proceeding brought by the respondents will stand suspended till decision is taken by the learned Judge on the application to set aside the ex-parte order.

**P.UBAID
JUDGE**

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