

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

OP (FC).No. 475 of 2014 (R)

AGAINST THE ORDER IN I.A.NOs.126/14 & 127/14 IN OP 275/2013 of FAMILY
COURT, TIRUR DATED 28-08-2014

PETITIONER(S)/PETITIONER/RESPONDENT:-:

ABDUL SALAM,
S/O.KUNHIMUHAMMED, KANAPANTE PURAKKAL HOUSE
NIRAMARUTHUR AMSOM, PUTHIYA KADAPPURAM DESOM
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.U.K.DEVIDAS

RESPONDENT(S)/RESPONDENTS/PETITIONERS:-:

1. NOORJAHAN,
D/O.MOIDEEN BAVA, PALLATH HOUSE, P.O.PARAVANNA
PACHATTIRY AMSOM, PARAVANNA DESOM, TIRUR TALUK
MALAPPURAM DISTRICT - 676 502.
2. SAFVAN (MINOR)
3. SANOOFIYA (MINOR)
4. SAFNAS (MINOR) ,
(RESPONDENTS NO.2 TO 4 ARE MINORS REPRESENTED
BY MOTHER NATURAL GUARDIAN FIRST RESPONDENT
NOORJAHAN, D/O.MOIDEEN BAVA, PALLATH HOUSE
P.O.PARAVANNA, PACHATTIRY AMSOM, PARAVANNA DESOM
TIRUR TALUK, MALAPPURAM DISTRICT - 676 502.)

R1-R4 BY ADV. SRI.P.VENUGOPAL

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
03-02-2015, ALONG WITH O.P.(F.C.) NO.476/14, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

OP (FC).No. 475 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE ORIGINAL PETITION IN O.P.NO:275 OF 2013
ON THE FILES OF THE FAMILY COURT, MALAPPURAM.

EXHIBIT P2. TRUE COPY OF THE ORDER DATED 29.11.2013 IN O.P.NO:275 OF
2013 ON THE FILES OF THE FAMILY COURT, TIRUR.

EXHIBIT P3. TRUE COPY OF THE ORDER DATED 28.09.2014 IN I.A.NOs.126
AND 127 OF 2014 IN O.P.NO:275 OF 2013 ON THE FILES OF THE FAMILY
COURT, TIRUR.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN & P.D.RAJAN, JJ.

O.P.(F.C.)Nos.475 and 476 of 2014

Dated this the 3rd day of February, 2015.

J U D G M E N T

Mohanana, J.

The above two original petitions are arising out of the one and the same common order ; the parties are one and the same ; the factual inputs are also the same, hence the above original petitions are heard together and being disposed of by this common judgment.

2. The petitioner herein is the husband of the 1st respondent and father of respondents 2 to 4. The respondents herein filed O.P.No.275/13 under section 7(1) (f) of the Family Court Act for getting past maintenance from the petitioner herein for a period of 11 months. As the petitioner herein has failed to appear before the court below and contest the matter effectively, he was set ex parte and thereafter the petitioner herein preferred I.A.Nos.126 and 127 of 2014 in O.P.No.275/13 respectively

to set aside the ex parte decree passed in the original petition, after condoning the delay that occurred in filing the petition to set aside the ex parte decree and also filed CMP No.91/14 in M.C.No.238/13 to set aside ex parte order after condoning the delay that occurred in filing the petition. The court below as per the impugned order, allowed those petitions with a direction to pay cost of Rs.5,000/- to the respondents herein along with 50% of past maintenance amount ordered by the court below within a period of one month. It was ordered that if the petitioner herein fails to pay that amount within the stipulated period, the respondents can execute the ex parte decree. It is against the said order, the petitioner in I.A.Nos.126/14 and 127/14 in O.P.No.275/13 preferred O.P.(F.C.)No.475/14. Whereas, O.P.(F.C.)No.476/14 is directed against the very same common order by which the petitioner herein, who is the respondent in M.C.No.238/13, was directed to pay 50% of total amount ordered in Ext.P2 order within one

month as a condition precedent to set aside the ex parte order in M.C.No.238/13.

3. When the above original petition came up for consideration, in both the matters, this Court by order dated 29.9.2014 passed an interim order of stay on condition, the petitioner depositing a sum of Rs.25,000/- in both the matters, before the court below within one month from the date of that order.

4. Heard the learned counsel for the petitioner and the respondents.

5. The learned counsel for the respondents submitted that due to the stay order passed by this Court, the matter is pending without any decision and the respondents have not received any amount either towards past maintenance or towards future maintenance. So, it is prayed that this Court may permit the respondents to withdraw the amount already deposited by the petitioner in terms of the order dated 29.9.2014 issued by this Court. On the other hand,

the learned counsel for the petitioner submitted that by fixing the amount towards arrears as Rs.25,000/-, to be deposited by the petitioner herein towards the compliance of the order in I.A.Nos.126/14 and 127/14 as well as in CMP No.91/14, this original petition can be disposed of and the petitioner has no objection, in respondents withdrawing the amount including the cost already ordered by the court below.

6. On a perusal of the impugned order, it is discernible that the learned Judge of the court below found that the case has been listed for trial in the Family court at Malappuram on 29.10.2013 and when the case was taken for trial before the Family court, Tirur, the respondent therein, who is the petitioner herein, failed to appear in the said court. The learned Judge has also expressed his doubt as to whether the respondent/petitioner herein was aware of the transfer of the case to the present trial court and also found that, there is no proper explanation from the part of

the petitioner therein for not giving instruction to his counsel to attend the court on 29.10.2013. Thus, the court below after taking all the factual situation and the procedural aspect, has decided to give an opportunity to the petitioner to contest the original petition. However, such an opportunity was given only on condition to pay the cost and depositing portion of the maintenance for which the respondents are entitled.

7. Having regard to the facts and circumstances involved in the case, we are of the view that, instead of disposing the matter on technicalities, it is only just and proper to have the matters disposed on merit, after giving ample opportunities to both the contesting parties, including the opportunity to adduce evidence. In the present case, the trial court itself has decided to give an opportunity to the petitioner, but subject to terms. Under the above circumstance, we are inclined to dispose the original petition, upholding the decision of the court below

to grant opportunity to the petitioner to contest the matter, but subject to slight modification with respect to the condition imposed on the petitioner while allowing I.A.Nos.126/14 and 127/14 in O.P.No.275/13 and CMP No.91/14 in M.C.No.238/13.

In the result, these original petitions are disposed of on the following terms : The order of the Family court, Tirur, dated 28.8.2014, to pay cost @ Rs.5,000/- is confirmed and the petitioner is also directed to pay cost of Rs.5,000/- in CMP No.91/14 in M.C.No.238/13. The direction to deposit past maintenance in O.P.No.275/13 is modified and reduce the same to Rs.25,000/-. Similarly, the arrears ordered to be deposited as per the order in CMP No.91/14 in M.C.No.238/13 is also modified and instead of depositing 50% of the arrears of maintenance amount, ordered by the court below earlier, the petitioner herein is directed to deposit Rs.25,000/-. It is reported by both the counsel that, in terms of the order of this Court on

29.9.2014 in the above original petitions, the petitioner has already deposited a sum of Rs.25,000/- in each case, in the court below. If that be so, the petitioner need not deposit any additional amount towards arrears and the respondents can withdraw the said amount. The petitioner is also directed to deposit the cost of Rs.5,000/- as ordered by the court below in I.A.Nos.126/14 and 127/14 in O.P.No.275/13. The petitioner is further directed to pay cost of Rs.5,000/- as additional condition in the order in CMP No.91/14 in M.C.No.238/13. The above cost shall be paid within one month from today. The respondents are free to withdraw both cost of Rs.5,000/- each which will be deposited by the petitioner in O.P.No.275/13 and in M.C.No.238/13 and also the arrears deposited in the original petitions and in M.C. in terms of the order dated 29.9.2014 in the above original petitions. The Family court, Tirur, is directed to release the said amount, in case an application is filed by the respondents in this regard. On complying with the above

direction to pay cost as ordered above, the Family court is directed to proceed with the trial of O.P.No.275/13 and M.C.No.238/13 pending in that court, in accordance with the procedure and law and dispose the same on merit as expeditiously as possible.

Original petitions are disposed of accordingly.

Sd/-

V.K.MOHANAN, Judge

Sd/-

P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge