

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

RPFC.No. 174 of 2010 ()

AGAINST THE ORDER IN CMP NO. 1090 OF 2009 AND 1091 OF 2009
IN MC 874/2008 of FAMILY COURT, MALAPPURAM DATED 28-12-2009

REVISION PETITIONER(S)/REVISION PETITIONER/PETITIONER:

CHERIKKODAN ABDULLA,
S/O.ABDURAHIMAN (LATE), CHANDAKKUNNU
NILAMBUR (REPRESENTED BY POWER OF ATTORNEY HOLDER)
ABDUL LATHEEF, S/O.KOYAKKUTTY, AGED 48 YEARS
KALLAYI HOUSE, NEDUMUNDAKKUNNU, NILAMBUR P.O

BY ADV. SRI.P.SAMSUDIN

RESPONDENT(S)/PETITIONERS:

1. HASEENA, D/O.MOHAMMED,
KANDAPPADAN HOUSE, MAMPATTA POOKKOTTUMPADAM P.O.
NILAMBUR TALUK, MALAPPURAM DISTRICT.

2. HASLA, AGED 13 YEARS,
MINOR REPRESENTED BY MOTHER IST RESPONDENT.

3. HASIL RAHIMAN, AGED 9 YEARS,
MINOR REPRESENTED BY MOTHER IST RESPONDENT.

R1-3 BY ADV. SRI.BABU S. NAIR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
R.P. (FC) No. 174 of 2010
.....

Dated this the 17th day of September, 2015

ORDER

The revision petitioner is the respondent in MC No. 874 of 2008 on the files of the Family Court, Malappuram. The revision petitioner was set ex -party by the court below on 2-2-2009 as per order in MC874/2008. Thereafter, the revision petitioner filed CMP No. 1090 of 2009 before the court below for condoning the delay of 140 days in filing the application for setting aside the ex-parte order . CMP No. 1091 of 2009 was also filed praying for setting aside the ex-parte order. The court below dismissed the said CMPs as per order dated 28-12-2009. Aggrieved by the said order, this revision petition has been filed.

2. Heard both sides.

3. It is borne out from the records that the revision petitioner was set ex-parte by the court below on 2-2-1009 on

the reason that the revision petitioner was not present before the Court on that day. Thereafter, he filed a petition before the court below to set aside the ex-parte order along with a petition to condone the delay of 140 days in filing the application for setting aside the ex-parte order.

4. The court below dismissed the said delay condonation petition stating that the revision petitioner did not adduce any evidence to prove that there was sufficient cause to condone the delay. According to the revision petitioner, the revision petitioner was bed-ridden on 2-2-2009 and thereafter he left for abroad for his job and in the said circumstances, there occurred a delay of 140 days in filing the revision petition.

5. Considering the nature of the case, I am of the view that it is only just and proper to grant one more opportunity to the revision petitioner to contest the matter on merits. For the said reason, I am inclined to set aside the order passed by the court below dismissing CMP Nos. 1090 of 2009 and 1091 of 2009 and the said petitions stand allowed condoning the delay in filing the application for setting aside the ex-parte order. The application for setting aside the ex parte order also stands allowed setting aside the ex parte order and the matter is remitted to the court below for fresh consideration of the matter in accordance with

law, affording reasonable opportunity to both sides to substantiate their contentions, as expeditiously as possible and at any rate within three months from the date of receipt of this order.

6. In the result, this Revision Petition stands allowed as above. Registry shall transmit the entire records to the court below .

Needless to say that the revision petitioner shall deposit 50% of the arrears of the amount ordered by the court below as maintenance within one month from today. If the petitioner deposits the said amount as directed above, the respondent herein shall be at liberty to withdraw the same.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge