

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

OP (FC).No. 517 of 2014 (R)

AGAINST THE ORDER/JUDGMENT IN MC 126/2011 of FAMILY COURT, KOLLAM
DATED 11-01-2013

PETITIONER(S) :

NAVEEN ISSAC
S/O.ANTONY ISSAC, ERASSERIL HOUSE, VENALA P.O.
KOCHI-682028, REPRESENTED BY HIS POWER OF ATTORNEY
SOBHA ANTONY ISSAC, W/O.ANTONY ISSAC, ERASSERIL HOUSE
VENALA P.O., KOCHI-682028.

BY ADV. SRI.MANU ROY

RESPONDENT(S) :

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1. NISHEL PREM ELIAS, AGED 33 YEARS
D/O.PREM ELIAS, ARDEN, NO.259
VRINDAVAN NAGAR, KAPPAKKADA, KOLLAM-691008.
 2. SANYA MARY ISSAC,, AGED 10 YEARS
(MINOR), REPRESENTED BY HER MOTHER, NISHEL PREM ELIAS
ARDEN, NO.259, VRINDAVAN NAGAR
KAPPAKKADA, KOLLAM-691008.

R1 & 2 BY ADV. SRI.V.V.RAJA

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (FC).No. 517 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1: COPY OF POWER OF ATTORNEY.

P2: COPY OF ORDER IN M.C.NO.126/11 DATED 11.01.13.

P3: COPY OF COMPROMISE PETITION DATED 5.12.09.

P4: COPY OF JUDGMENT DATED 10.8.2011.

P5: COPY OF ORDER DATED 10.6.14.

P6: COPY OF CR.M.P.NO.187/14 DATED 18.7.14.

P7: COPY OF CR.M.P.NO.188/14 DATED 18.7.14.

P8: CERTIFIED COPY OF COMMON ORDER DATED 29.9.14.

P9: COPY OR ORDER DATED 27.2.10 IN M.C.NO.342/09.

RESPONDENT(S) ' EXHIBITS

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NIL.

TRUE COPY

PA TO JUDGE.

acd

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

O.P.(FC) No. 517 of 2014

Dated this the 5th day of February, 2015

JUDGMENT

V.K.Mohanana,J.

The petitioner herein and the 1st respondent are the husband and wife, who were married on 25.11.2007 and the 2nd respondent was born to them in the said wedlock. As there was difference of opinion among the couple, there occurred frequent legal battle between them and thus the 1st respondent approached the Family Court, Kollam by filing M.C.No.126/2011 under Section 125 of the Cr.P.C. claiming maintenance for the 2nd respondent at the rate of ₹25,000/-. The petitioner herein, who is the respondent therein set ex parte and finally Ext.P2 order was passed directing him to pay an amount of ₹10,000/- towards

maintenance of his minor child. Subsequently, the petitioner preferred Crl.M.P. Nos. 187 and 188 of 2014 in M.C.No.126/2011. Crl.M.P.No.187/2014 was filed to set aside the ex parte order, whereas Crl.M.P.No.188/2014 was filed with a prayer to condone the delay of 432 days, which occurred in filing Crl.M.P.No.187/2014. The learned Judge of the Family Court, by a common order dated 29.9.2014 in Crl.M.P.No.187/2014 and 188/2014 in M.C.No.126/2011 dismissed both the petitions with cost of the respondents therein. It is against the said order, the above O.P.(FC) is filed under Article 227 of the Constitution of India praying inter alia to set aside Ext.P8 order and consequently, ex parte order in Ext.P2 in M.C.No.126/2011 of Family Court, Kollam.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

3. The learned counsel appearing for the petitioner, after inviting our attention to the terms of the out of court settlement arrived at between the parties, submitted that the petitioner has already deposited ₹5 lakhs in the name of the 2nd respondent and she is getting sufficient amount for her expenses including education. It is also the submission of the learned counsel that at the time of filing M.C., the petitioner was permanently residing at Bangalore, which fact is very much known to the claimants before the Court below. But, they have shown wrong address of the petitioner as 'residing at Vennala, Ernakulam'. Therefore, according to the petitioner, notice was not received by him and immediately after came to know about the ex parte order, he approached the Family Court by filing the above referred petitions. But, the Court, without considering the merit of

such petitions, dismissed the same and as such, according to the petitioner, the petitioner was not granted an opportunity to contest the matter.

4. On the other hand, the learned counsel appearing for the respondents vehemently submitted, after taking us through Ext.P4 judgment of this Court in O.P.(FC) No.2629/2011, that when the petitioner received notice in the application filed under Section 125 Cr.P.C., instead of approaching the Court below, he approached this Court, which resulted in Ext.P4 judgment and therefore, the contention of the learned counsel for the petitioner that the petitioner was not aware of the proceedings pending before the Court below is totally baseless and incorrect. It is also the submission of the learned counsel that after filing of the claim petition, not even a single pie was given to the 2nd respondent, who is none other than the daughter

of the petitioner, especially when she need money, she being a school going student.

5. We have carefully considered the submissions made at the Bar. We have also perused the materials produced along with the Original Petition (FC). The fact beyond dispute is that Ext.P2 order was passed behind the petitioner and the petitioner was failed to contest the matter, which was either for his fault or because of non-service of notice on him. We are not proposed to consider the merit of those contentions, since it is our considered opinion that it is only just and proper to grant an opportunity to the petitioner to contest the matter properly before the Court below. The petitioner has advanced various contentions before this Court against the claim for maintenance. We are not inclined to consider those contentions, but we are of the view that if the

petitioner wants to get an opportunity to contest the matter, by providing him such opportunity, he can be relegated to take such contentions before the Court below and thus he can adduce evidence also in support of his contentions, based upon which, the Court can enter into a decision on merit. However, it is a fact that though M.C. was filed in the year 2011, no money has been paid to the claimants. It is also relevant to note that there is no dispute about paternity of the 2nd respondent. Under the above circumstances, though we are inclined to grant an opportunity to the petitioner, the same can be given only on terms.

In the result, the O.P.(FC) is disposed of on the following terms:

- i) Exts.P2 and P8 orders are set aside on condition that the petitioner pays a cost of ₹25,000/- to the

respondents within one month from today by paying directly to the respondents, subject to the satisfaction of the learned Judge of the Family Court.

ii) The petitioner shall deposit the entire arrears as on today, after deducting a sum of ₹50,000/- already deposited.

iii) The petitioner shall pay ₹5,000/- as interim maintenance to the respondents with effect from 1.3.2015.

iv) All the amount deposited by the petitioner except cost, can be adjusted towards the amount, which will be finally decided by the Court below on completing the proceedings pending before the Court, untrammelled by the interim monthly maintenance amount fixed by this Court.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

