

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

RPFC.No. 274 of 2013 ()

AGAINST THE ORDER IN MC 118/2012 of FAMILY COURT, THIRUVALLA

PETITIONER/RESPONDENT:

SUNIL K.JOSEPH, AGED 32 YEARS
KOCHUPURACKAL HOUSE, THYKODAM, VYTTILA
ERNAKULAM.

BY ADVS.SRI.ABRAHAM JOHN
SMT.CHITHRA R.SHENOY

RESPONDENT(S)/PETITIONERS:

1. JOBY, AGED 30 YEARS
D/O. SARALAMMA, KARIMBINTHUNDIYIL HOUSE, MARAMON P.O.
KOZHENCHERY TALUK, PATHANAMTHITTA.
2. AMAYA, MINOR
AGED 1 1/2 YEARS, D/O JOBY, KARIMBINTHUNDIYIL HOUSE
MARAMON P.O., KOZHENCHERY TALUK
PATHANAMTHITTA, REPRESENTD BY MOTHER IST RESPONDENT.

R1,R2 BY ADV. SRI.V.SETHUNATH
R1,R2 BY ADV. SRI.S.JUSTUS

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
13-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER's EXHIBITS:

ANNEXURE-1: COPY OF THE PETITION FILED BY RESPONDENTS CLAIMING MAINTENANCE.

ANNEXURE 2: OBJECTION FILED BY THE PETITIONER.

ANNEXURE 3: A TRUE COPY OF THE MEDIATED SETTLEMENT AGREEMENT ENTERED IN TR.P.C.32/2012 AND ACCEPTED BY THE HON'BLE HIGH COURT OF KERALA.

ANNEXURE 4: CERTIFIED COPY OF THE ORDER PASSED BY THE FAMILY COURT ANNEXED WITH THE SO-CALLED COMPROMISE.

RESPONDENTS' EXHIBITS:

ANNEXURE R1(A): TRUE COPY OF THE PAYMENT MADE BY THE RESPONDENT IN THE FORM OF FIXED DEPOSIT RECEIPT IN THE STATE BANK OF TRAVANCORE, VYTTILA BRANCH.

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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R.P.(F.C). No.274 OF 2013

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Dated this the 13th day of January, 2015

ORDER

The revisionist-husband filed this revision petition challenging the order passed by the Family Court, Thiruvalla in M.C.No.118 of 2012. That was a petition filed by the respondents under section 125 Cr.P.C. The Family Court passed Annexure-4 order as hereunder:-

“Petitioner and Respondent present. They joint and filed compromise petition. Compromise recorded and the M.C. is ordered in terms of the compromise petition which forms part of the order.”

2. The petitioner has taken up a ground that he is a person who incurred a legal disability and owing to his mental disability, he was incapable to enter into any valid settlement. However, no document whatsoever was produced either before the Family Court or before this Court to show that he is a mentally disabled person. In

short, besides the averment to that effect, nothing has been produced in this revision petition to support or even to suggest that the petitioner is a person who incurred a legal disability on account of mental illness. It is to be noted at this juncture that this revision petition has been filed by the petitioner in his individual capacity and not through the next friend. That apart, along with the revision petition, the petitioner filed a petition to condone the delay in filing revision. It is accompanied by an affidavit sworn in by the petitioner wherein it is stated thus:-

“It is submitted that I am a person having autistic disorder and difficulty in understanding things unless properly enlightened and explained. Usually, my uncle used to accompany me but on the day of signing the compromise, I was alone and my counsel also did not take pains to made me understand the contents of the compromise petition.”

3. Later, the petitioner filed Crl.M.A.No.472 of 2014 dated 23.1.2014 for amending the memorandum of revision petition by deleting the following portions from the memorandum of revision

petition:-

“The Lawyers drafted a compromise and got the signature of the petitioner therein. In fact the petitioner was not at all aware about the contents of the compromise and his counsel also did not take any pains to explain it either to the petitioner or other persons who usually accompanied him to the court. In fact, the petitioner was not capable of understanding the contents of the compromise and he has not voluntarily signed it also. Going through the compromise itself it can be seen that most of the terms are quite unreasonable and incapable of performance”.

“The petitioner being a person incapable of properly understanding things due to his incapacity; the lawyer who appeared for the petitioner ought not have filed the compromise which resulted in the disposal of the maintenance petition in an inequitable way.”

“In this circumstances his lawyer ought not to have made him to affix his signature in the compromise prepared and the learned judge also ought not have accepted the same without further verification and enquiry.”

4. Subsequently, on 27.3.2014, a learned Judge of this Court, after interacting with the parties and finding that they got earnest

desire to settle the matter amicably, directed the parties to participate in a mediation at the Kerala State Mediation and Conciliation Centre (KSMCC). On 31.7.2014, another order was passed directing the parties to appear for mediation at KSMCC. Later, this Court passed another order on 4.8.2014 taking note of the successful mediation and the consequential signed memorandum of agreement, as hereunder:-

“The parties have come to terms on mediation, and have also signed a Memorandum of Agreement. What is arrived at is a one time settlement for lump sum payment under Section 125 of Cr.P.C towards the claim of the wife and the minor child. The husband seeks some time in terms of the compromise to make fixed deposit in the name of the wife and the child. Hence adjourned to the first week of October, 2014.”

5. Now, when this matter is taken up for consideration today, the learned counsel on both sides submitted that pursuant to the Memorandum of Agreement dated 31.7.2014, the revision petitioner has effected deposits and hence, the revision petition may be allowed and appropriate directions may be issued. The learned counsel for the

petitioner submitted that to give effect to the terms of the Memorandum of Agreement and to make it operative and binding, it is highly necessary to allow Crl.M.A.No.472 of 2014 seeking amendment of the memorandum of revision petition. Thereupon, I have taken up the said Crl.M.A and after considering the same in the light of the subsequent developments found that the same could be allowed in the interest of justice. Accordingly, vide a separate order the same was allowed and therefore, there can be no further legal impediment for considering the Memorandum of Agreement and the subsequent developments to dispose of this revision petition.

6. Having heard the rival submissions and going through the Memorandum of Agreement under section 89 of the Code of Civil Procedure read with Rules 24 and 25 of the Civil Procedure (Alternative Dispute Resolution) Rules, 2008, it is evident that the matter has been settled between the parties and the revision petitioner has also effected deposit of amount in the name of the respondents

and the first respondent has produced the copy of the fixed deposit receipts. Evidently, in terms of the settlement, an amount of ₹30,00,000 was deposited by the revision petitioner towards the future maintenance and welfare of the respondents in the manner agreed upon by the parties in the Memorandum of Agreement dated 31.7.2014. On consent of the parties, the order passed by the Family Court in M.C.No.118 of 2012 dated 23.3.2013 is set aside. It is made clear that hereinafter the parties would be governed by the conditions of settlement dated 31.7.2014 which forms part of this order.

Revision petition is accordingly allowed.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

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September, 2010