

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C) .No. 19569 of 2012 (U)

PETITIONER(S) :

1. XAVIER, AGED 53 YEARS,
S/O. VARKEY, AMBATTU HOUSE, PULICKATHOTTY P.O.,
MANNIYAM BHAGAM, KANJIKUZH VILLAGE, THODUPUZHA TALUK.

2. ROY, S/O. VARKEY, RESIDING -DO-

BY ADV. SRI.UNNIKRISHNAN.V.ALAPATT

RESPONDENT(S) :

1. PRESIDING OFFICER,
MAINTENANCE TRIBUNAL (R.D.O.), IDUKKI.

2. VARKEY
S/O. SOURIAR, AMBATTU HOUSE, PULICKATHOTTY KARA,
VANNAPPURAM VILLAGE, THODUPUZHA TALUK,
PULICKATHOTTY P.O.

R2 BY ADV. SRI.GEORGEKUTTY MATHEW

R1 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 19569 of 2012 (U)

APPENDIX

PETITIONER(S) EXHIBITS

EXHIBIT P1: TRUE COPY OF THE PETITION SUBMITTED BY THE 2ND
RESPONDENT DATED 05-01-2011.

EXHIBIT P2: TRUE COPY OF THE OBJECTION FILED BY THE
PETITIONERS DATED 23-02-2011.

EXHIBIT P3: TRUE COPY OF THE ORDER PASSED BY THE 1ST
RESPONDENT DATED 05-08-2011.

EXHIBIT P4: TRUE COPY OF THE RECEIPTS DATED 17-01-2012.

RESPONDENTS' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.19569 of 2012

Dated this the 23rd day of November, 2015.

JUDGMENT

The petitioners herein are the counter petitioners 1 and 2 in a proceedings initiated before the 1st respondent by the 2nd respondent under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, (for short, 'the Act') claiming maintenance of the petitioners. The petitioners filed a joint objection mainly contending that the petition is not maintainable on the reason that the 2nd respondent has already filed a petition seeking maintenance before the Family Court under Chapter IX of the Cr.P.C. and the Family Court passed an award directing the petitioners to pay maintenance allowance to the 2nd respondent. According to Section

12 of the Act, the 2nd respondent has no right to avail reliefs both under the Act and Chapter IX of the Cr.P.C. The 1st respondent went wrong and passed Ext.P3 order directing the petitioners to pay an amount of Rs.500/- per month to the 2nd respondent in addition to the amount which was granted by the Family Court under Chapter IX of the Cr.P.C. Hence the petitioners prayed for calling for the records leading to Ext.P3 and to quash the same.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents. Both the counsel advanced arguments in support of the averments and contentions raised in this memorandum of writ petition and the counter affidavit respectively.

3. As rightly submitted by the learned counsel for the petitioners, going by Section 12 of the Act, it is seen that there is a clear bar that notwithstanding anything contained in Chapter IX of the Cr.P.C., where a senior citizen or a parent is entitled for maintenance

under Chapter IX of the Cr.P.C., 1973, and also entitled for maintenance under this Act may, without prejudice to the provisions of Chapter IX of the said Code claim such maintenance under either of those Acts but not under both. In short, parents are not entitled to get maintenance under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in addition to the amount granted by the competent court under Chapter IX of the Cr.P.C. and conversely also.

4. In the instant case, the 2nd respondent himself admitted that he has already availed of the benefit under Chapter IX of the Cr.P.C., 1973. But, his grievance is that huge amount is pending due under the award passed by the Family Court. If any amount is in arrear under Chapter IX of the Cr.P.C., it is for the 2nd respondent to seek appropriate remedies available under law to realise the arrear. In the above view of the matter, I find that the direction to pay Rs.500/- per month in addition to the amount granted by the Family Court under Chapter IX of the Cr.P.C. will stand

quashed. It is made clear that other directions in Ext.P3 will stand as such without any interference.

This writ petition is allowed in part.

K. HARILAL, JUDGE

okb.