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Gireesh Vs. Adithyakrishna

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Court : Kerala

Decided On : Nov-11-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Gireesh

Respondent : Adithyakrishna

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN MONDAY,THE11H DAY OF NOVEMBER201320TH KARTHIKA, 1935 Mat.Appeal.No. 646 of 2013 () ---------- AGAINST

ORDER
DT. 3.7.2013 IN I.A.NO.1109/2013 IN O.P.NO.74/2012 OF FAMILY COURT, IRINJALAKUDA APPELLANT/PETITIONER: ----------
GIREESH C.G S/O.GOPALAKRISHNAN, CHIRAYIL HOUSE PADINJARE VEMBALLOOR DESOM SREE NARAYANAPURAM VILLAGE, KODUNGALLUR TALUK BY ADVS.SRI.M.SHAJU PURUSHOTHAMAN SRI.K.S.RAJESH RESPONDENT/RESPONDENT: ----------
ADITHYAKRISHNA MINOR, S/O.GIREESH, C/O.SUSMY K.S KOLAMVEETTIL HOUSE, VELUPPADAM P.O VARANTHARAPPILLY VILLAGE, MUKUNDAPURAM TALUK, (MINOR REP BY MOTHER &GUARDIAN, SUSMI68000 R BY ADV. SRI.A.JAYASANKAR R BY ADV. SRI.SUNDARAM

GOVIND R BY ADV. SRI.MANU GOVIND R BY ADV. SRI.JOPHY POTHEN KANDANKARY THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON1111-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: acd ANTONY DOMINIC & P.D. RAJAN, JJ.

---------- Mat. Appeal No. 646 of 2013 ---------- Dated this the 11th day of November, 2013

JUDGMENT

ANTONY DOMINIC,J.

Heard the learned counsel for the appellant and also the learned counsel appearing for the respondent.

2. This appeal is directed against the order passed by the Family Court, Irinjalakuda in IA No.1109/13 in OP No.74/12. OP was filed by the respondent, the minor child of the appellant through his mother and guardian claiming an amount of `2,65,044/- towards treatment expenses. Admittedly, the minor child is suffering from Hydrocephalus requiring heavy expenses for his treatment.

3. Although the appellant appeared before the Family Court in response to the notice issued, subsequently, the appellant remained absent. He was accordingly set ex parte and on that basis, a decree was passed. Thereafter, the appellant filed the IA in question seeking to set aside the ex parte decree. Mat. Appeal No.646/13 2 That IA is now dismissed by the Family Court and it is this order which challenged in the appeal.

4. Learned counsel for the appellant contends that the main reason which influenced the Family Court to dismiss the application is that he has allegedly violated the order of this Court in paying monthly maintenance to the mother. Counsel states that even if there is truth in what is found, such reasoning is irrelevant and extraneous and should not have been held against him. A reading of the order shows that although the Family Court has stated so, the Family Court has further stated that the reasons stated to set aside the order are not proved as true and genuine with any supporting documents. Therefore, even if we eschew

the statement of the Family Court that the appellant has violated the order for payment of maintenance, still there is a valid reason given by the Family Court for rejecting the application.

5. According to the appellant, it was on account of the fact that he had suffered an injury in a motor accident that he had to remain absent and that since his absence was not deliberate, the Family Court should have set aside the impugned order as prayed for by him. Mat. Appeal No.646/13 3 6. Although it is true that such was the contention raised by the appellant, fact remains that the appellant did not substantiate the same by producing any evidence. In such circumstances, though we are unable to find fault with the Family Court, still as the appellant had urged several serious contentions, we are inclined to give the appellant yet another opportunity to contest the matter on merits, which shall, however, be subject to the following conditions: i) The appellant shall deposit the entire amount due from him under the order passed by the Family Court, Irinjalakuda in O.P.No.74/2012, within two weeks from today. ii) Subject to deposit as above, the order dated 3rd July, 2013 passed in IA.No.1109/2013 in O.P.No.74/2012 will stand set aside and the I.A. will stand allowed. iii) Thereafter, the Family Court shall reconsider O.P.No.74/2012 with opportunity to both sides and pass fresh orders in the matter. iv) On deposit of the amount as above, the respondent herein will be allowed to withdraw 50% of the amount deposited and the balance 50% shall be kept in a fixed deposit earning interest thereon and will be disbursed to the party who Mat. Appeal No.646/13 4 is successful in the O.P. v) Once the deposit is made as above, it would be open to the appellant to make an application before the Family Court for lifting the attachment that is stated to have been ordered by the Family Court. vi) It is made clear that, in the event, deposit is not made as above, the order dated 3rd July, 2013 impugned in this appeal will stand confirmed. ANTONY DOMINIC, JUDGE P.D. RAJAN, JUDGE. acd Mat. Appeal No.646/13 5 Mat. Appeal No.646/13 6

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