

Dhanapal, vs Subhadhra Bhargavan

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Court : Kerala

Decided On : Apr-10-2025

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : RPFC/61/2024

Appellant : Dhanapal,

Respondent : Subhadhra Bhargavan

Judgement :

:1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947
RPFC NO. 61 OF 2024 AGAINST THE ORDERS IN MC NO.119/2019
DATED 27/12/2023 AND CRL.M.P.NO.647/2023 IN MC NO.119/2019
DT 18/12/2023 OF FAMILY COURT, CHAVARA REVISION
PETITIONER/PETITIONER: DHANAPAL, AGED 55 YEARS S/O
KUNJUPILLAI VAIDYAN, VALIYATH
VADAKKATHIL, CHANAGANKULANGARA, OACHIRA,
KARUNAGAPPALLY, KOLLAM, PIN: 690526, PIN - 690526 BY ADVS.

V.PREMCHAND HALIYA T.P. MAHADEV M.J.
RESPONDENTS/PETITIONERS: 1 SUBHADRA BHARGAVAN AGED
68 YEARS W/O BHARGAVAN BHARGAVA
MANDIRAM,PUTHUPPALLY NORTH P O,
KAYAMKULAM,ALAPPUZHA,, PIN - 690527 2 MISHKA DHANAPALAN,
AGED 18 YEARS S D CHARISMA, FLAT NO 401,4TH FLOOR, NEAR
GOMES AR TEMPLE,SASMOLLEM, BAINA, VASCO DE GAMA, GOA,
PIN-403802., PIN - 403802 BY ADVS. ROSY P. F. SNEHA
RAJIV(K/001710/2018) THIS REV.PETITION(FAMILY COURT) HAVING
COME UP FOR ADMISSION ON 7.04.2025, ALONG WITH
RPFC.170/2024, THE COURT ON 10.04.2025 DELIVERED THE
FOLLOWING: :2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947
RPFC NO. 170 OF 2024 AGAINST THE ORDER IN MC NO.119/2019
DATED 27/12/2023 OF FAMILY COURT, CHAVARA REVISION
PETITIONERS/PETITIONERS: 1 SUBHADRA BHARGAVAN AGED 70
YEARS W/O BHARGAVAN, BHARAGAVA MANDIRAM,
PUTHUPPALLY NORTH P.O., KAYAMKULAM., PIN - 690527 2
MISHKA DHANAPAL AGED 19 YEARS D/O DHANAPALAN S, S D
CHARISMA FLAT NO. 401 FORTH FLOOR NEAR GOMTESHWAR
TEMPLE VASCO DA GAMA, GOA 403802 NOW RESIDING AT,
BHARAGAVA MANDIRAM,PUTHUPPALLY NORTH P.O.,
KAYAMKULAM, PIN - 69052 BY ADVS. P.F.ROSY PHILIP.N.JOSEPH
SNEHA RAJIV RESPONDENT/RESPONDENT: DHANAPALAN S S/O
KUNJU PILLAI , K.Y NILAYAM (VALYATHU VADAKKETHARAYIL)
OACHIRA, KARUNAGAPPALLY TALUK KOLLAM, PIN - 690528 BY
ADVS. V.PREMCHAND HALIYA T.P.(K/001754/2022) MAHADEV
M.J.(K/182/2022) :3: THIS REV.PETITION(FAMILY COURT) HAVING
BEEN FINALLY HEARD ON 7.04.2025, ALONG WITH RPFC.61/2024,
THE COURT ON 10.04.205 DELIVERED THE FOLLOWING: :4:

ORDER

Both these revision petitions are preferred against the

order of the Family Court, Chavara in MC No. 119/2019. I refer to

the status of the parties as they are shown in the impugned

order.

2. The 2nd petitioner is the daughter of the respondent. The 1st petitioner is the grandmother of the 2 nd petitioner. The

petitioners filed a maintenance case against the respondent claiming maintenance @Rs.25,000/- per month. The marriage between the daughter of the 1st petitioner and the respondent was solemnized on 12/2/2003. The 2 nd petitioner was born in their wedlock on 23/3/2005. Their marriage was dissolved on in OP(HMA) No.363/2007. According to the petitioners, the 2 nd petitioner is under the care and custody of the 1 st petitioner. It is alleged that the respondent has sufficient means to maintain the 2nd petitioner, but he wilfully neglected to maintain her.

3. Along with the maintenance case, the petitioners filed

Crl.M.P.No. 225/19 for interim maintenance. The Family Court granted `5,000/- to the 2nd petitioner as interim monthly maintenance. Since the respondent failed to pay the interim :5:

maintenance in spite of repeated directions, his defence was struck off as per the order in Crl.M.P.No.647/23. After trial, the Family Court allowed the MC and granted monthly maintenance of `5,000/- to the 2nd petitioner from the date of the petition. The respondent has preferred RPFC No.61/2024 challenging the orders passed in MC No.119/2019 as well as in Crl.M.P.No.647/23. The petitioners filed RPFC No.170/2024 dissatisfied with the quantum of maintenance granted to the 2nd petitioner.

4. I have heard both sides.

5. The paternity of the 2 nd petitioner is not in dispute.

The learned counsel for the petitioner in RPFC No. 61/2024 submitted that the maintenance case filed by the respondents before the Family Court is not maintainable for two reasons: (i) When the mother of the 2nd petitioner is alive, the 1st petitioner cannot maintain a petition on behalf of the minor, the 2 nd petitioner. (ii) The entire dispute between the respondent and the mother of the 2nd petitioner was settled and at the time of the settlement, he had given `5,00,000/- in lieu of maintenance to the 2nd petitioner as the full and final settlement and based on the said settlement, the Lok Adalat passed an award and as such, the 2nd petitioner cannot claim maintenance.

6. So far as the first contention is concerned, it is not in :6: dispute that the 1 st petitioner is the grandmother of the 2 nd

petitioner. It is also not much in dispute that at the time of filing the M.C., the 2nd petitioner was under the care and custody of the 1st petitioner. The 2nd petitioner, being minor, cannot directly file a petition for maintenance. It is settled that a person who has sufficient interest in the minor can move an application seeking maintenance under Section 125 of Cr.P.C. [Ramakrishnan v. Kali 1987 KHC 618]. Therefore, the contention that the 1 st petitioner has no locus standi to file a petition for maintenance on behalf of the 2nd petitioner cannot be accepted.

7. So far as the second contention is concerned, it is

settled that the right of a minor child to claim maintenance from its father cannot be forfeited by virtue of an agreement/ compromise entered into between the father and the mother. When the obligation on the father to maintain his minor child is recognised by a Statute, it is a matter of public policy. A statutory right which has been conferred on a person under public policy cannot be waived by the said person by an agreement (Vikraman Nair and Another v. Aishwarya and Others 2018 (5) KHC 156). The contention of the respondent is that the matrimonial dispute between him and his wife before the Family Court was settled at the Lok Adalat and an award was passed. It is his case that as a

:7:

part of the settlement, a consolidated sum of `5,00,000/- was given to the wife in lieu of maintenance of the wife and the 2 nd petitioner. It is pertinent to note that the 2 nd petitioner was not a party to the said compromise or in the cases between the respondent and his wife. Therefore, any compromise entered into between the respondent and his wife cannot bind the 2 nd petitioner.

8. The 2nd petitioner claimed maintenance @`25,000/-

per month. The Family Court granted only `5,000/- per month. Admittedly, the respondent is a pensioner. He was employed at the Military. According to the petitioners, the respondent gets a monthly pension of `30,000/- apart from `25,000/- from the financial firm run by him. The respondent has admitted that he is a pensioner. But according to him, he gets only `17,000/- per

month. Ext.X1 series, the statements of account of the respondent would show that the respondent has received a sum of `35,00,000/- from the pension account as commuted pension. It is a case where the defence of the respondent was struck off. The respondent did not produce any document to prove his income. In the absence of any evidence as to the actual income earned by the respondent, the evidence given by the petitioners regarding the income of the respondent is only to be accepted.

:8: Considering the means of the respondent and the requirement of the 2nd petitioner, I am of the view that the monthly maintenance of `5,000/- granted by the Family Court is too low and it has to be enhanced to `8,000/- per month.

9. The Supreme Court in *Rajnish v. Neha* [(2021) 2 SCC

324] upheld the power of the Court to strike off the defence if there was non compliance of the order of the payment of maintenance. It was held that striking off the defence can be resorted to if the court finds default to be wilful and contumacious, particularly to a dependent unemployed wife and minor child. As stated already, the respondent has ability to maintain the 2nd petitioner. The 2nd petitioner was only aged 13

years at the time of filing of the maintenance case. The 2 nd petitioner was in the custody of the 1st petitioner who has no job or source of income. Even though interim maintenance was awarded by the Family Court as early as on 30/7/2022, not a single month's maintenance is paid so far. Therefore, it is evident that failure on the part of the respondent to pay interim

maintenance ordered by the Family Court is wilful and

contumacious. Thus, no interference is called for in the order

passed by the Family Court striking off the defence. In the light of the above findings, RPFC No.61/2024 is :9: dismissed and RPFC No.170/2024 is allowed. The monthly maintenance granted by the Family Court is modified and the respondent is directed to pay monthly maintenance of `8,000/- (Rupees Eight thousand only) per month to the 2 nd petitioner from the date of the petition. Sd/- DR. KAUSER EDAPPAGATH JUDGE Rp :10: APPENDIX OF RPFC 170/2024 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE ORDER DTD.29.11.2023 IN CMP NO.569 /2023

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