

Salam vs Sumayya C

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Court : Kerala

Decided On : Jul-31-2023

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RPFC/66/2023

Appellant : SALAM

Respondent : Sumayya C

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945
AGAINST THE ORDER/JUDGMENT IN MC 125/2020 OF FAMILY
COURT, MALAPPURAM REVISION PETITIONER/RESPONDENT:
SALAM AGED 42 YEARS S/O. HAMZA, MELETHIL HOUSE,
VALLAPUZHA P.O., PATTAMBI, PALAKKAD DISTRICT, PIN - 679336
BY ADV K.MOHANAKANNAN RESPONDENTS/PETITIONERS:

1 SUMAYYA C AGED 32 YEARS D/O. HASSANAR, CHENNARIYIL
HOUSE, AALIPPARAMBU PO, ANAMANGAD, 2 MUHAMMED
MUSTHAFA AGED 14 YEARS S/O.SUMAYYA C, CHENNARIYIL
HOUSE, AALIPPARAMBU PO, ANAMANGAD, (MINOR

REPRESENTED BY MOTHER 1 ST RESPONDENT), 3 FATHIMA SANHA AGED 13 YEARS D/O. SUMAYYA C, CHENNARIYIL HOUSE, AALIPPARAMBU P.O, ANAMANGAD, (MINOR REPRESENTED BY MOTHER 1 ST RESPONDENT), 4 MINHA FATHIMA AGED 6 YEARS D/O. SUMAYYA C, CHENNARIYIL HOUSE, AALIPPARAMBU PO, ANAMANGAD,

(MINOR REPRESENTED BY MOTHER 1 ST RESPONDENT), BY ADVS. Dileep varghese TESMY VARGHEESE(K/446/2007) THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 31st day of July, 2023 This revision petition has been filed under Section 19(4) of the Family Courts Act and under Sections 397 and 401 of the the Code of Criminal Procedure, 1973, challenging Order dated 15.01.2022 in M.C.No.125/2020 on the files of the Family Court, Malappuram.

2. Heard the learned counsel for the revision petitioner and the learned counsel appearing for respondents 1 to 4, who are the petitioners in the above MC.

3. Precisely, the matter revolves around the dismissal of

Crl.MP Nos.1/2021 and 2/2021 by the learned Family Court Judge, Malappuram as per order dated 09.02.2022 since the revision petitioner herein failed to deposit 30% of the maintenance as ordered, as a condition to set aside the ex parte

order.

4. It is submitted by the learned counsel for the revision petitioner that as per the interim order dated 15.02.2023, this

Court directed to deposit 35% of the arrears of maintenance and an interim stay has been granted in the matter of execution of the order in MC. He would submit that Rs.1,83,750/- (Rupees one lakh eighty three thousand seven hundred and

fifty only) has already been deposited.

5. According to the learned counsel for the respondents,

Rs.10,000/- and Rs.15,000/- paid on other counts also were included in Rs.1,83,750/-. It is submitted by the learned counsel for the revision petitioner that therefore, the interim order of this Court not fully complied with.

6. To be on the crux of this matter, an ex parte order

was passed on 09.04.2021, whereby the learned Family Court Judge granted maintenance at the rate of Rs.7,000/- (Rupees seven thousand only) to the first respondent-wife, Rs.3,000/- (Rupees three thousand only) each to petitioners 2 and 3 and Rs.2,000/- (Rupees two thousand only) to the 4th petitioner. Even though the revision petitioner filed petitions, vide CMP Nos.1/2021 and 2/2021, to set aside the ex parte order, after

condoning the delay of 206 days, the Family Court allowed the same, on condition to deposit 30% of the arrears of maintenance. Later, the Family Court dismissed the petitions for want of deposit of 30% of the maintenance ordered by the Family Court.

7. As of now, 35% of the amount alleged to be

deposited by the revision petitioner while the respondents disputed the same. Therefore, the payment in so far as 35% ordered by this Court can be decided by the Family Court, after hearing both sides and balance if any, shall be paid by the revision petitioner herein.

8. In view of the deposit as submitted, Annexure A2

order stands set aside and MC 125/2020 brought back to the

files of the Family Court with direction to dispose of the same, afresh, after considering the objection and evidence, if any, to be filed/adduced by the revision petitioner, subject to the stipulations hereunder.

9. It is specifically ordered that apart from the deposit

already made and after deciding the quantum, after hearing both sides, the revision petitioner shall continue to pay Rs.5,000/- (Rupees five thousand only) to the first respondent, Rs.2,500/- (Rupees two thousand and five hundred only) each to respondents 2 and 3 and and Rs.2,000/- (Rupees two thousand only) to the 4th respondent and also to clear the entire arrears in the above rate, within a period of thirty days from today. If the petitioner clears the arrears as ordered, the Family Court is directed to proceed with the MC afresh, after providing opportunity to the revision petitioner to adduce evidence.

10. It is specifically ordered that if the arrears, as directed

by this Court, is not paid within 30 days, the order impugned shall stand revived for execution and in such event, recording the same, the Family Court can close the MC. In that event, the respondents are at liberty to execute the impugned order as such.

This revision petition stands disposed of as indicated above. Registry is directed to forward a copy of this order to the Family Court concerned, within two weeks for information and compliance. Sd/- A. BADHARUDEEN JUDGE nkr APPENDIX OF RPFC 66/2023 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF ORDER IN I.A 1 OF 2021 OF THE FAMILY COURT MALAPPURAM DATED 15/1/2022 Annexure A2 CERTIFIED COPY OF ORDER IN I.A 3 OF 2022 IN MC 125/2020 OF THE FAMILY COURT MALAPPURAM DATED 15/1/2022 RESPONDENT EXHIBITS EXHIBIT R1 TRUE COPY OF FIR NO.402/2020 OF CHERPULASSERRY POLICE STATION ALONG WITH FIS STATEMENT EXHIBIT R2 TRUE COPY OF JUDGMENT IN OP NO.209/2020 DATED 26.04.2022 OF FAMILY COURT, MALAPPURAM

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