

Subaida vs State of Kerala

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.MC/3323/2023

Appellant : Subaida

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH
AGRAHAYANA, CRL.MC NO. 3323 OF 2023 AGAINST THE
ORDER/JUDGMENT MC 202/2015 OF FAMILY COURT,KOZHIKODE
MC 202/2015 OF FAMILY COURT,KOZHIKODE PETITIONER/S:
SUBAIDA AGED 34 YEARS D/O. IBRAHIM VARIYAMPILAKKIL
HOUSE, ARYAMBRAM DESOM, MADAVOOR VILLAGE,
KOZHIKKODE, PIN - BY ADVS. P.V.ANOOP PHIJO PRADEESH
PHILIP ANTONY THOMAS NAVJYOTH S. ANJU R S.
RESPONDENT/S:

1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682031 2 ABDUL NASAR S/O ABDUL RAHMAN, EDAKKATTIL, MUTTANCHERRY DESOM, MADAVOOR VILLAGE, KOZHIKODE DISTRICT, PIN - 673585 THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.G. AJITHKUMAR, J.

..... Dated
this the 30th day of November, 2023

ORDER

The petitioner is the former wife of the 2 nd respondent. An

order directing the 2nd respondent to pay maintenance to the

petitioner was passed in MC No.202 of 2015 by the Family Court, Kozhikkode. The petitioner filed CMP No.173 of 2020 for enforcement of that order. In the execution proceedings a warrant for the arrest of the 2 nd respondent was seen issued. At that stage, CMP No.2 of 2021 was filed on behalf of the 2 nd respondent seeking to keep in abeyance execution of the warrant. The Family Court as per the order dated 18.11.2022 directed to keep in abeyance the proceedings in the execution petition. It is the said order that is under challenge in this Crl.M.C.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. Considering the relief proposed to be granted, service of notice on the 2nd respondent is dispensed with. Paragraph No.2 in the impugned order reads thus;

"As directed by this court on 21.06.2022 the respondent produced before me. I interacted with him. From the appearance of the petitioner and from his demeanor it is clear that respondent is a mentally insane person. Copy of medical records

also produced. This document also make it clear that petitioner is suffering from mental illness and he is undergoing treatment and not in a position to pay the amount. Hence I am of the view of that for the time being petition can be kept in abeyance."

4. The 2nd respondent was brought before the court, the

learned Judge after examining him, considered the matter in the light of the documents of treatment produced and took the view that the 2nd respondent was suffering from mental illness. From the said order itself, it can be seen that it was only a preliminary assessment and not a finding based on any detailed assessment. The learned Judge did not decide any question in controversy as per the said order. On the basis of the impression of the Judge on questioning the 2nd respondent a preliminary finding was recorded that the 2nd respondent was suffering from mental illness and therefore further proceedings in the execution petition were ordered to be kept in abeyance. That is only a tentative finding and not an order deciding rights of the parties.

5. Considering the nature of the impugned order, it is

possible for the petitioner to approach the Family Court requesting to take a decision on the question whether the execution can be taken out by any other mode. The petitioner is also entitled to request the court to have an enquiry in order to decide whether the 2nd respondent is really incapable of defending himself. The impugned order was rendered on 18.11.202. Owing to the lapse of time also, the said order can have a review for which also the petitioner can certainly approach the Family Court. In such circumstances, I am of the view that no interference to the impugned order is required. Hence, this Crl.M.C is disposed of, however, reserving the right of the petitioner to approach the Family Court for the redressal of grievance by resorting to the modes mentioned herein before. Sd/-
P.G. AJITHKUMAR, JUDGE Dxy APPENDIX OF CRL.MC 3323/2023
PETITIONER ANNEXURES Annexure A TRUE COPY OF THE ORDER OF THE HON'BLE FAMILY COURT, KOZHIKODE IN MC NO.202/2015 DATED 29/9/2015
Annexure B TRUE COPY OF THE CMP NO.2/2021 DATED 20.12.2021 FILED BY THE RESPONDENT'S BROTHER Annexure C TRUE COPY OF THE COUNTER

AFFIDAVIT FILED BY THE PETITIONER IN CMP 2/2021 IN EX CMP 173/2020
DATED 08.02.2022 Annexure D TRUE COPY OF THE DELIVERED ORDER IN
CMP NO.2/2021 IN CMP 173/2020 IN MC NO

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