

Sameer vs Fathima Sana (Minor)

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Court : Kerala

Decided On : Oct-31-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : RPFC/304/2019

Appellant : Sameer

Respondent : Fathima Sana (Minor)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 31ST DAY OF OCTOBER 2023 / 9TH KARTHIKA, 1945 AGAINST THE ORDER/JUDGMENT MC 230/2018 OF FAMILY COURT, THALASSERY REVISION PETITIONER/S: SAMEER AGED 39 YEARS S/O. MUSTHAF A, KINAKOOL HOUSE, PATOOL, P.O. IRIKKOOR, KANNUR - 670 593. BY ADVS. ABDUL RAOOF PALLIPATH SRI.K.R.AVINASH (KUNNATH) SRI.PRAJIT RATNAKARAN RESPONDENT/S: FATHIMA SANA (MINOR), AGED 9 YEARS NEAR MANIKOTH JUMATH MASJID, POST UMMANCHIRA, THALASSERY, KANNUR - 670 649, REPRESENTED BY NEXT FRIEND AND MOTHER SHABEENA, 'ASHIYAN, NEAR MANIKOTH JUMATH MASJID, POST

UMMANCHIRA, THALASSERY, KANNUR - 670 649 (THALASSERY POLICE STATION LIMIT). BY ADV SMT.K.DEEPA (PAYYANUR) THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: (Dated this the 26th day of October, 2023)

ORDER

The revision petition is filed assailing the order

passed in M.C.No.230/2008 of the Family Court, Thalassery directing the revision petitioner to pay the respondent - his daughter - monthly maintenance allowance @ Rs.5,000/- from the date of petition. The revision petitioner was the respondent and the respondent was the petitioner before the Family Court.

2. The respondent - the minor daughter of the revision petitioner - had filed the application under Section 125 of the Code of Criminal Procedure (in short,

'Code'), through her mother, for an order of maintenance. It was her case that her parents were married on 25.04.2010 and she was born in their wedlock. However, the revision petitioner has refused to maintain her since 14.02.2011. The revision petitioner is doing business in the Gulf and earning Rs.1,00,000/- per month. He has also landed properties. The respondent does not have means to maintain herself. She requires Rs.7,000/- per month towards her maintenance. Hence, the application.

3. The revision petitioner resisted the application by filing a written objection, inter alia, contending that his marriage with the mother of the respondent was dissolved by him pronouncing 'talaq'. A settlement

agreement was executed between him and the respondent's mother and he paid the respondent's mother Rs.4/- lakh towards her maintenance and Rs.3/- lakh towards the maintenance of the respondent. Hence, the respondent is not entitled to any further amount as maintenance. The revision petitioner is not employed in the Gulf or earning Rs.1/-lakh as alleged in the application. Hence, the application

may be dismissed.

4. The respondent's mother was examined as PW1 and Ext.P1 was marked through her in evidence. The revision petitioner was examined as RW1.

5. The Family Court, after analysing the pleadings and materials on record, by the impugned order, partly

allowed the application by directing the revision
(28.06.2018).

6. Aggrieved by the said order; the present revision petition is filed.

7. Heard; Sri.Abdul Raoof P., the learned Counsel appearing for the revision petitioner and Smt.K.Deepa, the learned Counsel appearing for the respondent.

8. The learned Counsel appearing for the revision

petitioner vehemently argued that the Family Court has failed to appreciate the fact that the revision petitioner had paid an amount of Rs.3/- lakh as per the agreement executed between the revision petitioner and his former wife - the mother of the respondent, - which includes the maintenance allowance of the respondent. Therefore, the revision petitioner is not liable to pay any further amount as maintenance to the respondent.

9. The learned Counsel appearing for the

respondent, on the contrary, submitted that the alleged agreement executed between the parties was not marked in evidence. The revision petitioner has also not produced any material to prove that he has paid amount as lumpsum maintenance to the respondent. Moreover, even assuming that the revision petitioner has paid a lumpsum maintenance to the respondent's mother as per an agreement, the agreement is hit by Section 23 of the Indian Contract Act, the law laid down by this Court in Nhandadi Pavithran vs. Praseetha C.V. [2020 (2) KLT 581] and is not binding on the respondent, who is still a minor. Hence, the revision petition is only to be dismissed.

10. Is there any illegality, irregularity and impropriety in the impugned order ?

11. The respondent is undisputably the minor

daughter of the revision petitioner. She has asserted that the revision petitioner, despite having sufficient means, has neglected to maintain the respondent. The revision petitioner is employed in Gulf and earning Rs.1,00,000/- per month and, therefore, she is entitled to monthly maintenance @ Rs.7,000/-.

12. The revision petitioner denied the assertions in the application and contended that he had paid an amount of Rs.3/- lakh to the respondent's mother as lumpsum maintenance as per an agreement.

13. During the cross examination of PW1, she admitted that she has received Rs.3/- lakh from the revision petitioner towards her reasonable and fair

provision of maintenance and Rs.1,00,000/- as maintenance for the respondent. But, she testified that the revision petitioner has failed to comply with the terms and conditions of the agreement and has not paid the entire amount. Therefore, the respondent is entitled to maintenance.

14. Firstly, the agreement allegedly executed

between the revision petitioner and his former wife - the mother of the respondent was not produced and marked in evidence. Secondly, even if there was an agreement between the parties, the same is not binding on a minor child and is hit by Section 23 of the Indian Contract Act, as it is against public policy to relinquish a statutory right of maintenance. The said question is no longer

resintegra in view of the law laid down in Nhandadi Pavithran vs. Praseetha (supra). Thirdly, even if the revision petitioner has paid any amount pursuant to the said agreement, there is no material on record to prove his defence of payment of lumpsum maintenance.

15. On an overall consideration of the pleadings and materials on record I do not find any illegality,

impropriety or irregularity in the impugned order

warranting interference by this Court by exercising its revisional power under Section 19(4) of the Family Courts Act, 1984. The revision petition is devoid of any merit and is hence, consequentially dismissed. Sd/- C.S.DIAS JUDGE
rkc/31.10.23 APPENDIX OF RPFC 304/2019 PETITIONER ANNEXURES
ANNEXURE A1 TRUE COPY OF THE AGREEMENT EXECUTED BY THE
REVISIONPETITIONER AND THE MOTHER OF THE PETITIONER DATED
10.7.2017.

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