

Subash vs Neethu

Subash vs Neethu

SooperKanoon Citation : sooperkanoon.com/1384499

Court : Kerala Orders

Decided On : Oct-31-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : RPFC/417/2023

Appellant : Subash

Respondent : Neethu

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 RPFC NO. 417 OF 2023 AGAINST THE ORDER IN MC 266/2019 OF FAMILY COURT, IRINJALAKUDA REVISION PETITIONER/RESPONDENT: SUBASH AGED 28 YEARS S/O SASTHAMVALAPPIL SUKUMARAN, MAVINCHUVADUDESOM, KALLUR VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN - 680317 BY ADV G.SREEKUMAR (CHELUR) RESPONDENT/PETITIONER:

NEETHU AGED 22 YEARS D/O JAYAN, KALLIKADAVIL HOUSE, NANDIKKARADESOM, PARAPPOOKKARA VILLAGE, MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN - 680301 BY

ADVS. SANTHOSH P.PODUVAL R.RAJITHA(K/870/2005) CHITHRA
S.BABU(K/376/2012)

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: R.P(F.C.) NO. 417 OF 2023 2 Dated this the 31st day of October, 2023

ORDER

The revision petition is filed challenging the common

order passed in M.P No. 267/2020 & M.P.268/2020 in

M.C. No.266/2019 of the Family Court, Irinjalakuda. The revision petitioner was the respondent and the respondent was the petitioner in M.C. No.266/2019 before the Family Court.

Brief facts

2. The respondent had filed M.C No.266/2019 under

Section 125 of the Code of Criminal Procedure (in short, Code), for an order of maintenance from the revision petitioner @ Rs.15,000/- per month. Although notice in the application was served on the revision petitioner, he could not appear before the Family Court, because he was held up in Jharkhand during the pandemic period.

R.P(F.C.) NO. 417 OF 2023 3 The Family Court set him ex-parte and proceeded with the applications, and passed an ex-parte order, directing the revision petitioner to pay the respondent monthly maintenance allowance @ Rs.10,000/- from the date of petition.

3. Immediately, on the revision petitioner returning to Kerala, he filed M.P. No.267/2020, to set aside the ex- parte order and M.P. No.268/2020, to condone the delay of 140 days in filing the former application. The respondent had filed her

written objections to both the applications. 4 The Family Court, by the impugned common

order, conditionally allowed the applications, by directing the revision petitioner to deposit half of the arrears of maintenance due as per the ex-parte order.

5. The conditional impugned order passed by the Family Court is onerous, unjust and unreasonable. Hence, the revision petition. R.P(F.C.) NO. 417 OF 2023 4

6. Heard; Sri. G.Sreekumar (Chelur), the learned counsel appearing for the revision petitioner and Sri. Santhosh P. Poduval, the learned counsel appearing for the respondent.

7. Is there any illegality, impropriety or irregularity in the impugned order ?

8. The respondent had filed M.C. No.266/2019 in the year 2019, claiming monthly maintenance allowance from the revision petitioner @ Rs.15,000/-.

9. Admittedly, there were two other proceedings between the parties as O.P Nos. 932/2019 and 358/2019 pending before the same Family Court, which the revision petitioner was contesting through a counsel.

10. The notice that was sent to the revision petitioner

got returned with an endorsement as unclaimed. Consequently, the Family Court called the revision petitioner absent and set him ex parte on 25.2.2020 and then proceeded with the determination of the application. R.P(F.C.) NO. 417 OF 2023 5

11. The Family Court, by order dated 18.3.2020, partly allowed the application, by directing the revision petitioner to pay the respondent monthly maintenance allowance @ Rs.10,000/-.

12. Subsequently, the revision petitioner filed M.P. No.267/2020 and M.P.No. 268/2020 to set aside the ex- parte order and to condone the delay.

13. The Family Court, after considering the rival

pleadings and taking note of the fact that the revision petitioner was contesting connected matters through a counsel, concluded that the revision petitioner was deliberately evading service of notice in order to protract the determination of M.C. No.266/2019. Therefore, the Family Court conditionally allowed the applications, directing the revision petitioner to pay half the arrears due as per the ex-parte order.

14. The second proviso to Section 125 of the Code

specifically empowers the Magistrate to pass an order of R.P(F.C.) NO. 417 OF 2023 6 interim maintenance within a period of 60 days from the date of service of notice of the application. Therefore, even if the revision petitioner had contested the application on its merits, his sacrosanct liability to maintain his wife cannot be wiped off by paying the interim maintenance.

15. Taking into consideration the fact that the

application was filed in the year 2019, the ex-parte order

was passed on 18.3.2020, and the common order to set aside the ex- parte order was only passed on 17.11.2022, I am of the definite view that the impugned order is justifiable and has achieved the benevolent purpose of the legislation. I do not find any error, illegality or impropriety in the course adopted by the Family Court.

16. Merely because the revision petitioner was

unable to contest the proceedings, the same cannot be taken as a ground to deny the respondent her legal right to be maintained during the above period. There are no R.P(F.C.) NO. 417 OF 2023 7 valid grounds made out in the revision petition warranting interference by this Court under Section 19(4) of the Family Courts Act. The revision petition is devoid of any merits and is

consequentially dismissed. However, the time period fixed by the Family Court to deposit the arrears of maintenance is extended till 20.11.2023, to enable the revision petitioner to deposit one half of the arrears of maintenance and contest the application on its merits. If the revision petitioner deposits the above amount,

then

the Family Court is directed to dispose of M.C. No.266/2019 in accordance with law and as expeditiously as possible. SD/- C.S.DIAS, JUDGE rmm31/10/2023

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com