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Jyothi Anthraper vs Tomy Joseph

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Court : Kerala

Decided On : Jul-10-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : OP(Crl.)/532/2022

Appellant : Jyothi Anthraper

Respondent : Tomy Joseph

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN MONDAY, THE 10TH DAY OF JULY 2023 / 19TH ASHADHA, 1945 OP(CRL.) NO. 532 OF 2022 MC 209/2020 OF FAMILY COURT, ERNAKULAM PETITIONER/S:

1 JYOTHI ANTHRAPER AGED 36 YEARS W/O. TOMY JOSEPH D/O. KURIAN ANTHRAPER, ANTHRAPER HOUSE, HOUSE NO XI/4/E KARUMALLOOR PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL U.C. COLLEGE P.O., ALUVA ERNAKULAM, PIN - 683102 2 ETHAN JOSEPH TOMY (MINOR) AGED 10 YEARS S/O. TOMY JOSEPH ANTHRAPER HOUSE, HOUSE NO XI/4/E KARUMALLOOR

PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL U.C. COLLEGE P.O., ALUVA ERNAKULAM REPRESENTED BY HIS MOTHER 1ST PETITIONER, JYOTHI ANTHRAPER, PIN - 683102 3 JOANNA MARIA TOMY (MINOR) AGED 5 YEARS S/O. TOMY JOSEPH ANTHRAPER HOUSE, HOUSE NO XI/4/E KARUMALLOOR PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL U.C. COLLEGE P.O., ALUVA ERNAKULAM REPRESENTED BY HIS MOTHER 1ST PETITIONER, JYOTHI ANTHRAPER, PIN - 683102 BY ADVS. C.G.PREETHA N.G.ANITHA DR.ABHILASH O.U.

RESPONDENT/S: TOMY JOSEPH AGED 41 YEARS S/O. LATE JOSEPH JOHN SRAMPICAL HOUSE, KUVEMPU ROAD, SHIMOGA KARNATAKA, PIN - 577201 BY ADVS. BOBY MATHEW K.MEERA(K/587/1991) THIS OP (CRIMINAL) HAVING BEEN FINALLY HERAD ON 21.06.2023, THE COURT ON 10.07.2023 DELIVERED THE FOLLOWING: -2-

JUDGMENT

Dated this the 10th day of July, 2023 The petitioners have filed M.C.No.209 of 2020 before the Family Court, Ernakulam seeking maintenance from the respondent, husband of the

first petitioner and father of petitioners

of Rs.50,000/- per month for herself and at the rate of Rs.25,000/- per month for petitioners 2 and 3. Along with the maintenance case, the petitioners also filed M.P.No.490 of 2020, seeking interim maintenance at the same rate. By Ext.P3 order, the Family Court directed the respondent to pay Rs.10,000/- each to petitioners 1 to 3 from the date of petition. The court also observed that the claim of petitioner No.1 will be decided after taking evidence. The respondent thereafter filed Ext.P4 petition for clarifying -3- the order to the effect that the respondent is bound to pay maintenance at the rate of Rs.10,000/-, only to petitioners 2 and 3. The petition was filed on the premise that, in the open court, the learned Judge had declared that

the respondent need pay maintenance

contending that there is no mistake in Ext.P3

order and the petition for clarification is filed

with the mala fide intention of protracting the

payment. While so, the respondent

petitioners 2 and 3 at the rate of Rs.10,000/- per month. This original petition is filed seeking to enhance the maintenance amount to the extent claimed in the petition for interim maintenance.

2. I heard the learned Counsel for the petitioners and the respondents. -4-

3. In view of the dispute regarding the wording of Ext.P3 order, a report was called from the Family Court. In the report, the incumbent Judge has stated that, on 04.10.2021, his predecessor in office had passed Ext.P3 order. The order was handwritten in the order sheet. On

inspection, the order is seen to

order was issued based on the copy application

submitted by the petitioners on 10.11.2021. Later, the respondent submitted a copy application on 26.04.2022 and another certified copy was issued wherein the direction is to pay interim maintenance to respondents 2 and 3 alone. The change in the wording of Ext.P3 occurred since the handwritten order was suo motu corrected by the then officer between 10.11.2021 and 26.04.2022.

4. Even though the manner in which the original order was suo motu corrected, after -5- issuing certified copies of the order to the parties is objectionable, a complaint filed by the petitioner against the then Judge was closed

by the High Court, on its administrativ

order on merits, I find no justifiable reason

having been stated in the order

01.08.2022, prior to the submission of affidavits of disclosure by both sides. Pertinently, the respondent had filed his objection to the maintenance case only on 16.12.2022, much after issuance of Ext.P3 order. Hence, the order is passed based on the pleadings in the MC and the arguments of the Counsel on either side. The -6- pleadings in the MC is to the effect that the respondent was working as a Senior Integrated Architect in Canadian Tyre Financial Services and drawing a salary of 6850 Canadian dollars,

equivalent to Rs.6 lakhs per month. In addition, he was working as the Financial Advisor for the World Financial Group, for a remuneration of 3000

Canadian Dollars. Further, the respondent had landed properties and buildings in Shimoga and Bangalore. The specific case of the first petitioner is that she is not employed and is depending on her parents for sustenance. In such circumstances, the Family Court was not justified in denying interim maintenance to the first petitioner based on the unsubstantiated contentions urged on behalf of the respondent.

The Family Court did not also fo

-7- Family Court ought to have caused the parties to file affidavits of disclosure, before passing Ext.P3 order. In my opinion, the said illegality cannot result in the order being set aside, since decision to that effect will go against the objective of Section 125, which is to prevent vagrancy and destitution of neglected wives and children. For the aforementioned reasons, the original petition is disposed as under;

(i) The respondent is directed to pay interim maintenance to petitioners 1 to 3 at the rate of Rs.10,000/- per month from the date of the petition.

(ii) The Family Court shall take earnest efforts to dispose the maintenance case within four months of receipt of a copy of this

judgment.

Sd/- V.G.ARUN JUDGE Scl/ -8- PETITIONER EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE PETITION IN M.C.NO 209 OF 2020 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONERS DATED 24.08.2020 EXHIBIT P2 THE TRUE COPY OF THE PETITION FOR INTERIM MAINTENANCE IN M.P.NO 490 OF 2020 IN M.C.NO 209 OF 2020 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONERS DATED 24.08.2020 EXHIBIT P3 THE TRUE COPY OF THE ORDER IN M.P.NO 490 OF 2020 IN M.C.NO 209 OF 2020 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM DATED 04.10.2021 EXHIBIT P4 THE TRUE COPY OF THE PETITION FOR CLARIFICATION IN M.P.NO 389 OF 2022 IN M.C.NO 209 OF 2020 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY THE RESPONDENT DATED 10.05.2022

EXHIBIT P5 THE TRUE COPY OF THE COUNTER AFFIDAVIT IN M.P.NO 389 OF 2022 IN M.C.NO 209 OF 2020 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY PETITIONERS DATED 01.08.2022 EXHIBIT P6 THE TRUE COPY OF THE AFFIDAVIT OF ASSETS AND LIABILITIES IN M.C.NO 209 OF 2020 ON THE FILE OF THE HON'BLE FAMILY COURT, ERNAKULAM FILED BY 1ST PETITIONER DATED 01.08.2022

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