

Gopalakrishnan vs Minikumari.L

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Court : Kerala

Decided On : Nov-09-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : RPFC/186/2018

Appellant : Gopalakrishnan

Respondent : Minikumari.L

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 9TH DAY OF NOVEMBER 2022/18TH KARTHIKA,
AGAINST THE ORDER/JUDGMENT IN MC 402/2015 OF FAMILY
COURT, THIRUVANANTHAPURAM REVISION
PETITIONER/RESPONDENT: GOPALAKRISHNAN, AGED 50 YEARS,
S/O.THANKAPPAN ASARI, VAZHAVILA VEEDU, MANGATTUKONAM,
PAYATTUVILA, KOTTUKAL DESOM, KOTTUKAL VILLAGE. BY ADVS.
SRI.R.BINDU (SASTHAMANGALAM) SRI.PRASANTH M.P
RESPONDENTS/PETITIONERS:

1 MINIKUMARI.L, AGED 43 YEARS, D/O.LEELA, LEELAVILASAM, PUNNAMOODU DESOM, KALLIYOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN-695042. 2 MIDHU G. KRISHNA, AGED 13 YEARS, S/O.MINIKUMARI, PUNNAMOODU DESOM, KALLIYOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT, PIN-695042. (MINOR 2ND RESPONDENT, REPRESENTED BY MOTHER AND GUARDIAN, 1ST RESPONDENT, MINIKUMARI. L.). THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR

ADMISSION ON 09.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated, this the 9th November, 2022 In this revision petition filed under Section 19(1) of the Family Courts Act, 1984, and under Section 397 and 401 of the Code of Criminal Procedure, the revision petitioner, who is the respondent in M.C.No.402/2015 on the file of the Family Court, Thiruvananthapuram, impugns

order in the above M.C. dated 17.02.2017.

2. The respondents herein are the original petitioners in the above M.C.

3. Though notice was served upon the respondents, no body appeared.

4. The learned counsel for the revision

petitioner argued that the revision petitioner was directed to pay maintenance at the rate of Rs.3,500/- and Rs.3,000/- per month from 07.12.2015 onwards to the respondents herein, who are his wife and child. He submitted that as per order in M.C.No.77/2012, filed under Protection of Women from Domestic Violence Act, dated 20.11.2013, there was an order to pay

maintenance and, accordingly, the revision petitioner was directed to pay Rs.2,500/- each as maintenance to the respondents herein. It is submitted that since adjustment is required in the matter of maintenance, there shall be a

modification to the order.

5. According to the learned counsel for the revision petitioner, such adjustment is legally permissible and he has placed the decision reported in *Rajnesh v. Neha and Another* [2020

(6) KHC 1]. Paragraph No.134 of the above decision reads as under:

134. (a) Issue of overlapping jurisdiction.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/ Magistrate Courts throughout the country. We direct that:

(1) where successive claims for maintenance

are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding;

(ii) it is made mandatory for the applicant

to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding; (ii) if the order passed in the previous proceeding/s requires any modification or variation, it would be required to be done in the same proceeding.

6. In fact, adjustment in the matter of quantum of maintenance is necessary to avoid parallel and overlapping claims for maintenance.

Therefore, I am of the view that the order

required to be modified. Accordingly, it is held

that the respondents herein are entitled to get maintenance at the rate of Rs.3,500/- and Rs.3,000/- altogether, inclusive of maintenance granted as per order in M.C.No.77/2012 dated 20.11.2013.

7. It is submitted by the learned counsel for the revision petitioner that the 2 nd respondent, minor died on 04.02.2022. In view of

the above, while enforcing the order, the revision petitioner is at liberty to submit so, based on documents before the Family Court, so as pay maintenance till 04.02.2022 and to avoid payment thereafter to the minor child. Since it is submitted by the learned counsel for the revision petitioner that subsequently during 2020, the 1st respondent also got employment, I leave this matter to be considered by the Family Court in a proper petition filed under Section 127(1) of Cr.P.C. It is not doubt that then also the revision petitioner is bound to pay the maintenance till the date of joining the employment, if any. Accordingly, this R.P.F.C is disposed of. Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF R.P.(F.C) 186/2018 PETITIONER'S ANNEXURES: ANNEXURE-I TRUE COPY OF THE COMMUNICATION DATED 18.05.2017 OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT FROM THE SECRETARY, KALLIYOOR GRAMA PANCHAYATH. ANNEXURE-II TREATMENT CERTIFICATE OF THE PETITIONER DATED 07.09.2017.

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