

George Thomas vs Jisha Thomas

George Thomas vs Jisha Thomas

SooperKanoon Citation : sooperkanoon.com/1610786

Court : Kerala

Decided On : Jul-15-2021

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : OP(Crl.)/96/2021

Appellant : George Thomas

Respondent : Jisha Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
THURSDAY, THE 15th DAY OF JULY 2021 / 24TH ASHADHA, 1943
OP(CRL.) NO. 34 OF 2021 (Q) AGAINST THE ORDER IN MC 117/2019
OF FAMILY COURT, ALAPPUZHA PETITIONERS/PETITIONERS:

1 JISHA THOMAS, AGED 40 YEARS, D/O. THANKAMMA THOMAS,
PUTHENKOYIPPARAMBIL HOUSE, PALLIPPURAM (P.O),
CHERTHALA, ALAPPUZHA DISTRICT. 2 DON GEORGE, AGED 13
YEARS, (MINOR), S/O. JISHA THOMAS, PUTHENKOYIPPARAMBIL
HOUSE, PALLIPPURAM (P.O), CHERTHALA, ALAPPUZHA DISTRICT.
3 BEN GEORGE, AGED 11 YEARS, (MINOR), S/O. JISHA THOMAS,

PUTHENKOYIPPARAMBIL HOUSE, PALLIPPURAM (P.O),
CHERTHALA, ALAPPUZHA DISTRICT. (MINOR PETITIONERS 2 AND
3 ARE REPRESENTED BY THIER MOTHER, THE IST PETITIONER).
BY ADVS. GOPAKUMAR R.THALIYAL SRI.T.S.RAJASENAN

RESPONDENT/RESPONDENT: GEORGE THOMAS, AGED 42 YEARS,
S/O. K.V.THOMAS, KONTHYRA MADATHIL, THAIKKATTUKARA (P.O),
ALUVA, ERNAKULAM DISTRICT, PIN-683 106. BY ADVS.
DR.SEBASTIAN CHAMPAPPILLY DR.ABRAHAM P.MEACHINKARA
SRI.P.A.SAINUDEEN SRI.GEORGE CLEETUS SMT.MARGARET
MAUREEN D ROSE

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 15.07.2021,
ALONG WITH O.P. (CRIMINAL) 96/2021. THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: O.P.(Crl) Nos.34 & 96 of 2021 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN THURSDAY,
THE 15TH DAY OF JULY 2021 / 24TH ASHADHA, 1943 OP(CRL.) NO. 96 OF
2021 (Q) AGAINST THE ORDER IN MC 117/2019 OF FAMILY COURT,
ALAPPUZHA PETITIONER/RESPONDENT: GEORGE THOMAS, AGED ABOUT
43 YEARS, S/O.K.V.THOMAS, KONTHYRA MADATHIL HOUSE,
THAIKKATTUKARA P.O., ALUVA, ERNAKULAM DISTRICT, PIN-683 106. BY
ADVS. SEBASTIAN CHAMPAPPILLY SRI.P.A.SAINUDEEN DR.ABRAHAM
P.MEACHINKARA SRI.GEORGE CLEETUS SMT.MARGARET MAUREEN D
ROSE RESPONDENTS/PETITIONERS:

1 JISHA THOMAS, AGED 40 YEARS, D/O.THANKAMMA THOMAS,
PUTHENKOYIPPARAMBIL HOUSE, PALLIPPURAM P.O.,
CHERTHALA, ALAPPUZHA DISTRICT, PIN-688 541. 2 DON GEORGE
(MINOR), AGED 13 YEARS, REPRESENTED BY JISHA THOMAS,
PUTHENKOYIPPARAMBIL HOUSE, PALLIPPURAM P.O.,
CHERTHALA, ALAPPUZHA DISTRICT, PIN-688 541. 3 BEN GEORGE

(MINOR), AGED 11 YEARS, REPRESENTED BY JISHA THOMAS,
PUTHENKOYIPPARAMBIL HOUSE, PALLIPPURAM P.O.,
CHERTHALA, ALAPPUZHA DISTRICT, PIN-688

541. (MINOR RESPONDENTS 2 AND 3 ARE REPRESENTED BY THEIR

MOTHER, THE 1ST RESPONDENT IN THE FAMILY COURT AT ALAPPUZHA).
BY ADV SRI.GOPAKUMAR R.THALIYAL THIS OP (CRIMINAL) HAVING COME
UP FOR ADMISSION ON 15.07.2021 ALONG WITH O.P.(CRL) 34/2021. THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: O.P.(Crl) Nos.34 &
96 of 2021 3

JUDGMENT

Heard both sides. The husband came up in O.P.(Crl) No.96/2021 challenging the quantum of interim maintenance granted to two minor children at the rate of Rs.2,500/- per month. It is submitted by the learned counsel relying on the decision rendered by the Apex Court in Rajnesh v. Neha and Another [2020 (6) KHC 1] that the said

order was passed not in compliance with the said

decision. But the interim maintenance application was submitted prior to the said judgment of the Supreme Court. Maintenance amount as against the petitioner/wife was refused by the trial court against which she came up in O.P.(Crl) No.34/2021 and for enhancement of maintenance to the children. The interim maintenance application was admittedly filed before pronouncement of the abovesaid judgment. It was heard

and taken up for disposal prior to the said judgment

and hence directions issued were not within the notice O.P.(Crl) Nos.34 & 96 of 2021 4 of parties. But the fact that it was rendered after the said judgment of the Apex Court would assume importance as it was not taken notice of by the learned Family Court Judge. Now the minor children are studying in 9th and 6th standard.

What is ordered by the Family Court is only at the rate of Rs.2500/- per month each to minor children as against the job and income of the petitioner, who is serving as a Vehicle Inspector in the State of Kerala. It is admitted by the learned counsel for the respondent/husband that he is getting a monthly salary of Rs.59,350/-. Taking into account all these aspects, I am of the view that it is fit and proper to direct to pay an amount of Rs.7,000/- per month each to the children till the matter is considered by the trial court in compliance with the direction issued by the Supreme Court in the said judgment. For that purpose, the order of maintenance granted by the Family Court will stand set aside and remanded back to the trial court. Both parties shall O.P.(Crl) Nos.34 & 96 of 2021 5 appear before the Family Court on 02.08.2021 and the Family Court shall take steps to expedite the disposal of the matter positively within a period of two months from the date of appearance, regarding the interim maintenance. Both parties are hereby directed to comply with the direction issued by the Apex Court within one week from the date of their appearance. Till that time, the father, who is the respondent O.P.(Crl) No.34/2021, shall pay interim maintenance to the children at the rate of Rs.7,000/- (Rupees seven thousand only) per month each including arrears, if any, from the date of said application. Both the Original Petitions are disposed of. Sd/- P.SOMARAJAN JUDGE DMR/- O.P.(Crl) Nos.34 & 96 of 2021 6 APPENDIX OF OP(CRL.) 34/2021 PETITIONERS' EXHIBIT EXHIBIT P1 TRUE COPY OF THE PETITION IN M.C.NO.117/2019 DATED 18.10.2019 FILED BEFORE THE FAMILY COURT, ALAPPUZHA. EXHIBIT P2 TRUE COPY OF THE AFFIDAVIT AND PETITION DATED 18.10.2019 IN C.M.P. NO.240/2019 IN M.C.NO.117/2019. EXHIBIT P3 TRUE COPY OF THE OBJECTION DATED 9.1.2020 FILED BY THE RESPONDENT. EXHIBIT P4 TRUE COPY OF THE ORDER DATED 9.12.2020 PASSED BY THE FAMILY COURT, ALAPPUZHA IN C.M.P. NO.240/2019 IN M.C.NO.117/2019. EXHIBIT P5 TRUE COPY OF THE ORDER DATED 10.10.2019 IN I.A.NO.5483/2019 IN O.P.NO.2337/2019 PASSED BY THE FAMILY COURT, ERNAKULAM.

EXHIBIT P6

TRUE PHOTOCOPY OF THE BANK STATE

RESPONDENT'S EXHIBIT EXHIBIT R1(a) TRUE COPY OF THE RENT DEED DATED 17.10.2020 EXECUTED BY THE RESPONDENT. EXHIBIT R1(b) TRUE

COPY OF O.P. No.2337 OF 2019 DATED 10.10.2019 FOR RECOVERY OF MONEY FILED IN THE FAMILY COURT AT ERNAKULAM BY THIS RESPONDENT AS PETITIONER. EXHIBIT R1(c) TRUE COPY OF ORDER PASSED BY THE FAMILY COURT, ERNAKULAM IN I.A.No.5483 OF 2019 IN O.P. No.2337 OF 2019 DATED 11.10.2019. EXHIBIT R1(d) TRUE COPY OF O.P.No.2329 OF 2019 DATED 05.10.2019 FOR DIVORCE FILED IN THE FAMILY COURT, ERNAKULAM BY THIS RESPONDENT AS PETITIONER. EXHIBIT R1(e) TRUE COPY OF SALE DEED No.2708/1/2008 DATED 16.5.2008 OF SRO, ALUVA. EXHIBIT R1(f) TRUE COPY OF DEED No.38095/12/1 DATED 3.12.2012 OF SRO PANAVALLY. O.P.(Crl) Nos.34 & 96 of 2021 7 APPENDIX OF OP(CRL.) 96/2021 PETITIONER'S EXHIBIT EXHIBIT P1 TRUE COPY OF MC NO.117 OF 2019 DATED 18.10.2019 ON THE FILE OF THE FAMILY COURT, ALAPPUZHA. EXHIBIT P2 TRUE COPY OF CRL.MP NO.240 OF 2019 IN MC NO.117 OF 2019 DATED 18.10.2019 ON THE FILE OF THE FAMILY COURT, ALAPPUZHA. EXHIBIT P3 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN CRL.MP NO.240 OF 2019 IN MC NO.117 OF 2019 DATED 10.01.2020. EXHIBIT P4 TRUE PRINT OUT OF THE CASE DETAILS AS AVAILABLE ON THE WEBSITE OF THE FAMILY COURT, ALAPPUZHA TAKEN ON 20.02.2021. EXHIBIT P5 TRUE COPY OF THE ORDER IN CRL.MP NO.240 OF 2019 IN MC NO.117 OF 2019 PASSED BY THE FAMILY COURT, ALAPPUZHA DATED 09.12.2020. EXHIBIT P6 TRUE COPY OF THE COUNTER AFFIDAVIT (WITHOUT EXHIBITS) FILED BY THE PETITIONER IN OP(CRL.) NO.34 OF 2021 DATED 07.02.2021. RESPONDENTS' EXHIBIT NIL // TRUE COPY // P.A. TO JUDGE

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