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Anil Kumar, vs Nisha,

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Court : Kerala

Decided On : Sep-27-2019

Judge : Honourable Mr.Justice K.Harilal,Honourable Mr.Justice C.S.Dias

Appeal No. : OP (FC)/296/2019

Appellant : Anil Kumar,

Respondent : NISHA,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K.HARILAL & THE HONOURABLE MR.JUSTICE N.NAGARESH FRIDAY, THE 27TH DAY OF SEPTEMBER 2019 / 5TH ASWINA, 1941 AGAINST THE ORDER/JUDGMENT IN OP 283/2015 DATED 13-03-2019 OF FAMILY COURT, CHAVARA PETITIONER/RESPONDENT: ANIL KUMAR, AGED 52 YEARS S/O.YESODHARAN, KOCHAYYATHU VEEDU, THAZHAVA NORTH MURI, THAZHAVA VILLAGE, KARUNAGAPPALLY, KOLLAM DISTRICT. BY ADVS. SRI.BINU GEORGE SMT.HEMALATHA RESPONDENT/PETITIONER:

NISHA, AGED 42 YEARS, D/O.VISWANATHAN, THANDANVADAKKATHIL, THAZHAVA NORTH MURI, THAZHAVA

VILLAGE, KARUNAGAPPALLY, KOLLAM DISTRICT. R1 BY ADVS. SRI.N.ANAND SRI.BIJITH S.KHAN THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 27.09.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Dated this the 27th day of September 2019

Harilal, J The petitioner is the respondent in I A No.2042/2018 in O.P. No.283/2015 of the Family Court, Chavara, Kollam District. The respondent herein filed the above Original Petition for realisation of gold ornaments and patrimony from the petitioner herein and for a declaration of title with respect to the petition schedule property. Subsequently, the respondent filed I A No.2042/2015 in the said O.P to strike off the defence evidence of the petitioner herein on the ground that huge amount is pending due from the petitioner herein to the respondent under the order passed by the Family Court, Chavara in M.C.No.51/2015. The respondent has filed M.C.No.51/2015 against the petitioner herein, which was ordered to pay Rs.6,000/- to the petitioner and Rs.4,000/- each to the minor children. The order was passed on 06.03.2015. Since no amount was paid as ordered by the court, the respondent has filed CMP No.59/2018 for realisation of the amount. Till 04.04.2018 the

arrear of amount due to the respondent from the petitioner is Rs.4,45,066/-; but the petitioner has paid Rs.9,000/- only. That apart, the petitioner herein is retired from Indian Army and now, he is drawing a monthly pension of Rs.32,245/-. Besieds, he has been conducting a grocey shop and bakery at Manappally from which he obtains Rs.30,000/- per month also. The respondent has filed an objection resisting the said contention and according

to him, he has paid Rs.1,00,000/- in compliance with the order

passed by the Family Court, Chavara in M.C. No.51/2015. He admitted that he is an Ex-serviceman, who retired from India Army and he is drawing a monthly pension of Rs.32,000/-. He denied the contention that he is conducting a grocery shop and bakery.

2. After considering the aforesaid rival pleadings the

Family Court considered the question whether the respondent is entitled to get the order to strike off the defence of the respondent as prayed for and the court below allowed the petitioner as prayed for. This order is under challenge in this Original Petition (FC).

3. It is not disputed that CMP No.59/2018 was filed to

> execute the order in M.C. No.51/2015 and huge amount is outstanding as arrears and the petitioner herein has claimed that he has already paid Rs.1,00,000/-, but, no record has been produced to prove the alleged payment. Similarly, no document has been produced to prove that he has filed an appeal challenging the order passed in M.C.No.51/2015 and no stay order, against the execution of the order passed in the said MC has been produced.

4. Then the sole question that arises for consideration is, whether the Family Court is justified in striking off the defence pleadings and evidence, on a finding that huge amount is due

from the respondent to the petitioner in execution of the order

> passed in M.C.No.51/2015 and he willfully failed to pay the same. The petitioner has no case that no amount is due from him to the respondent under M.C.No.51/2015 and no document has been produced to prove that the amount allegedly paid by him or the amount due as balance from him. The petitioner admitted that he is a retired Army man having Rs.32,000/- as

monthly pension. Therefore, it cannot be said that he has no means to pay the arrear of maintenance allowance. As rightly observed by the Family Court in Muraleedharan V. Jincy reported in [2018(4)KHC 639] this Court held that if one of the parties to the proceedings is in arrears of payment of maintenance directed to be paid by a competent court having jurisdiction, wilful nonpayment of such amount definitely amounts to contumacious conduct on his part. In such event it is only just and proper to strike off the defence of the defaulting party. It is needless to say that, the wife has right to proceed against the husband to realise the arrear of maintenance of allowance in a proceeding against him invoking the right granted under Section 24 of the Hindu Marriage Act. In the above view, the Family Court is justified in striking off the pleadings, on a finding that non-payment of maintenance allowance is willful and amounts to contumacious conduct from the part of the petitioner. We do not find any fault in the aforesaid findings. The learned counsel for the petitioner submits that he is ready and willing to clear off the entire arrear of maintenance allowance within a period of two

months from today.

5. Having regard to the interest of justice, the petitioner

is granted one more opportunity to pay off the entire maintenance arrears. Consequently, Ext.P5 would stand set aside, if the petitioner pays entire arrears of maintenance allowance, within a period of two months from today, and convince the Family Court that no amount is due from him to the respondent under the order passed in M.C.No.51/2015. After two months, if the family court is satisfied that no amount is due to the respondent herein from the petitioner under the M.C.No.51/2015, the Family Court shall proceed with his defence pleadings and evidence also. It is needless to say, in the event of failure, Ext.P5 would stand in force as such. The above Original Petition(FC) is disposed of accordingly. Sd/- K.HARILAL JUDGE

Sd/- N.NAGARESH dlk/28.09.19 JUDGE

APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 A TRUE COPY OF OBJECTION IN OP NO.283/2015 OF FAMILY COURT, CHAVARA. EXHIBIT P2 A TRUE COPY OF PETITION IN IA NO.2042/2018 IN OP NO.283/2015 OF FAMILY COURT, CHAVARA. EXHIBIT P3 A TRUE COPY OF OBJECTION IN IA NO.2042/2018 IN OP NO.283/2015 OF FAMILY COURT, CHAVARA. EXHIBIT P4 RECEIPTS OF PAYMENT MADE BY THE PETITIONER TO THE RESPONDENT. EXHIBIT P5 CERTIFIED COPY OF ORDER DATED NO.283/2015 OF FAMILY COURT, CHAVARA.

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