

Sivadasan Vs. E.K. Sindhu

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Court : Kerala

Decided On : Sep-18-2012

Reported in : 2012(4)KLT301

Judge : Pius C. Kuriakose & Babu Mathew P. Joseph

Appeal No. : OP (FC). No. 1513 of 2011 (R)

Appellant : Sivadasan

Respondent : E.K. Sindhu

Advocate for Pet/Ap. : Mr. K.Rakesh

Judgement :

Pius C. Kuriakose, J.

1. Under challenge in this Original Petition filed under Article 277 of the Constitution filed by the petitioner who has finally suffered an order at the hands of the Family Court and this Court to pay maintenance to the respondent, his wife, is Ext.P4 order passed by the Family Court, turning down his plea that Execution Petition No.996/2010 in which Ext.P4 is passed by the Family Court is barred by limitation. The respondent remains absent notwithstanding the service of notice by this Court. Mr. K.Rakesh, learned counsel for the petitioner, relies on the proviso to Section 125(3) of the Code of Criminal Procedure. Section 125(3) Cr.P.C. reads as follows:

"125(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:"

The argument was that the claim in the execution petition which is for recovery for the maintenance due for a period of 65 months from 24.2.2005 totalling an amount of Rs.48,750/- is barred by limitation. According to the learned counsel, the claim is per se barred by limitation and hence, the E.P. should have been rejected as barred by limitation.

2. Having considered the submissions of the learned counsel and having read through Ext.P4 and having analysed Section 125(3) of the Code of Criminal Procedure, it is very clear to our mind that the Family Court (Execution Court) was perfectly justified in entertaining the execution petition. The present execution petition filed on 24.7.2010 is the third execution petition which the respondent filed after the Family Court passed the order of maintenance in her favour. The order of the Family Court in M.C.No.33/2004 was appealed against by the petitioner before this Court and this Court dismissed that appeal and confirmed the order of the Family Court only on 5.10.2010. It is seen that on entertaining the appeal, this Court granted stay. Noticing the stay order passed by this Court, the Family Court closed the two earlier execution petitions which were obviously filed within one year of passage of the original order by the Family Court. The submission of Mr. Rakesh before us is that the order of stay passed by this Court was a conditional one and as the petitioner failed to comply with the conditions, the order of stay stood vacated automatically and nothing prevented the respondent from continuing with the execution. According to us, the petitioner should not be and

cannot be allowed to take advantage of his own wrong of not complying with the conditions imposed by this Court while granting him relief at his behest. At any rate, the issue is squarely covered in favour of the respondent by judgment of the Supreme Court in *Shantha v. B.G. Shiva Nanjappa* (2005(4) SCC 468). It has been laid down therein that the limitation period of one year provided in the proviso to Section 125(3) Cr.P.C. is applicable only as regards the first execution petition. Moreover, we find that the two earlier execution petitions were not finally decided. They were only closed for statistical purpose. In either view of the matter, Ext.P4 is a perfectly correct order.

We dismiss this O.P.(FC).

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