



2023:KER:82323

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH AGRAHAYANA, 1945

RPFC NO. 392 OF 2023

AGAINST THE JUDGMENT DATED 21.03.2023 IN MC NO.229/2019 OF
FAMILY COURT, MALAPPURAM

REVISION PETITIONER/RESPONDENT:

MADHU.T,
AGED 42 YEARS,
S/O.RAMAN,
RESIDING AT: THITTAYIL HOUSE,
NELLIKUTH, MANJERI P.O,
MALAPPURAM DISTRICT-676122
REPRESENTED BY HIS BROTHER AND POWER OF ATTORNEY
HOLDER, RAJESH,
S/O.RAMAN THITTAYIL, THITTAYIL,
NELLIKUTH, PAYYANAD,
MALAPPURAM DISTRICT,
PIN - 676122

BY ADVS. V.PHILIP MATHEWS
ABY SKARIA
E.RADHAKRISHNAN
ASHISH MATHEW JOHN

RESPONDENTS/PETITIONERS:

- 1 ANITHA.K,
AGED 35 YEARS,
D/O.CHANDRASEKHARAN, RESIDING AT : KADENGARA HOUSE,
SANTHIGRAMAM, MANJERI P.O,
MALAPPURAM DISTRICT, PIN - 676121

- 2 NIVED KRISHNA,
AGED 11 YEARS,
S/O.MADHU, RESIDING AT : KADENGARA HOUSE,
SANTHIGRAMAM, MANJERI P.O, MALAPPURAM DISTRICT (MINOR
REPRESENTED BY HIS NEXT FRIEND/ MOTHER- FIRST
RESPONDENT- ANITHA.K), PIN - 676121

BY ADV K.RAKESH

THIS REV. PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 21.12.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



Dated this the 21st day of December, 2023

ORDER

The revision petition is filed questioning the legality and correctness of the order in M.C.No.229/2019 of the Family Court, Malappuram, ordering the revision petitioner to pay monthly maintenance allowance to the respondents – his wife and son – @ Rs.4,000/- to the wife up to 2021 and thereafter, @ Rs.6,000/- from 01.02.2022 and @ Rs.3,000/- to the son till the end of 2021 and thereafter, @ Rs.4,000/- from 01.02.2022. The revision petitioner was the respondent and the respondents were the petitioners before the Family Court.

2. The respondents had filed the application under Section 125(1) of the Code of Criminal Procedure,1973 (*'Code', for the sake of brevity*), seeking monthly maintenance allowance from the revision petitioner @ Rs.15,000/- and Rs.10,000/-,



respectively. It was their case that, the first respondent was married to the revision petitioner on 15.11.2008 and the second respondent was born in their wedlock. The revision petitioner misappropriated the money and gold ornaments entrusted to him as the first respondent's share in her parental properties. The revision petitioner refused to maintain the respondents, despite having sufficient means and employed in Kuwait. Hence, the application.

3. The revision petitioner entered appearance and filed his written objections. Nonetheless, he did not appear at the time of the trial. Consequently, he was set *ex-parte*.

4. The respondents also filed O.P.No.446/2019 and the first respondent had filed O.P.No.626/2019 against the revision petitioner before the same court for a decree for return of money, gold ornaments and past maintenance, and a decree for divorce.



5. The Family Court consolidated and jointly tried the three proceedings. The second respondent and two witnesses were examined as PWs 1 to 3 and Exts A1 to A5 and Exts X1 to X3 were marked in evidence. The revision petitioner did not let in any evidence.

6. The Family Court, on the basis of the uncontroverted materials on record, partly allowed the application, by directing the revision petitioner to pay the respondents monthly maintenance allowance as already observed above.

7. It is assailing the said order; the revision petition is filed.

8. Heard; Sri. V.Philip Mathew, the learned counsel appearing for the revision petitioner and Sri.K.Rakesh, the learned Counsel appearing for the respondents.

9. Is there any illegality, impropriety or



irregularity in the impugned order ?

10. The revision petitioner does not dispute his marriage with the first respondent and the paternity of the second respondent.

11. Although the revision petitioner had filed his written objection in the application, he did not let in any evidence. He had filed I.A.No.3/2023 in O.P.No.446/2019, to permit him to record his evidence through video conferencing. The family Court, by order dated 20.03.2023, dismissed the application for the reason that the revision petitioner was not ready for examination through video conferencing. Accordingly, he was set *ex-parte*. The respondents let in oral evidence and marked the above mentioned documents and, thereafter, the Family Court passed the impugned order.

12. On an appreciation of the materials on record, it is seen that the revision petitioner was on an earlier



occasion also set *ex-parte*. His application to set aside the *ex-parte* order was dismissed by the Family Court. Then, he approached this Court and filed R.P.(FC) No.250/2022. This Court, by order dated 02.09.2022, allowed the revision petition, on condition the revision petitioner pays Rs.50,000/- as costs to the respondents. It is thereafter that he has again been set *ex-parte* and the present order is passed.

13. Indisputably, the revision petitioner has not filed an application under Section 126 of the Code, to set aside the *ex-parte* order; instead, he has directly filed the revision petition before this Court.

14. The respondents had filed the application under Section 125(1) of the Code in the year 2019. We are presently at the end of 2023. It is nearly four years since the application is pending and no amount has paid as maintenance to the respondents, principally due to wilful laches on the part of the revision



petitioner. Although I am not satisfied with the antecedents of the revision petitioner and the reasons stated by him for his absence, taking a lenient view in the matter, just for the purpose of affording the revision petitioner one last opportunity to contest the matter on merits, I am inclined to set aside the impugned order as per the principle laid down by the Honourable Supreme Court in ***Kousalya v. Mukesh Jain*** [2020 KHC 6766] i.e. to set aside the impugned order, subject to the condition that the revision petitioner continues to pay the maintenance allowance ordered by the Family court in the impugned order, which shall be deemed to an order of interim maintenance allowance. If the revision petitioner pays the entire arrears of maintenance due as per the impugned order, the impugned order will stand set aside and the revision petitioner will be afforded an opportunity to contest the application on merits, which



in turn would do complete justice to both sides.

Resultantly, the revision petition is allowed as follows:

- (i) The impugned order dated 21.03.2023 in M.C.No.229/2019 will stand set aside, subject to the following conditions:
 - (a)The revision petitioner pays Rs.4,000/- to the first respondent and Rs.3,000/- to the second respondent as monthly interim maintenance from the date of application (July, 2019) till the disposal of M.C.229/2019.
 - (b)The revision petitioner is permitted to deposit the arrears of maintenance, as ordered above, in three equated and successive monthly installments commencing from 21.01.2024.
 - (c)If the revision petitioner deposits any amount, the same shall be released to the respondents 1 and 2, in accordance with law.
 - (d)If the revision petitioner fails to deposit one of the installments as ordered above, the impugned order shall stand confirmed and the respondents would be at liberty to execute the impugned order.



- (ii) If the revision petitioner pays the entire amount due as ordered above, the parties shall file their affidavits of disclosure of assets and liabilities as laid down by the Honourable Supreme Court in ***Rajnish v. Neha and Anr.*** [2020 (6) KHC 1].
- (iii) After the parties file the above affidavits, the Family Court shall afford the parties an opportunity to let in their evidence and being heard, and then the Family Court shall dispose of M.C.No.229/2019, in accordance with law and as expeditiously as possible.
- (iv) Coercive proceedings, if any, initiated against the revision petitioner shall be deferred to enable him to pay the installments as ordered above.

Sd/-

C.S.DIAS,JUDGE