



IN THE HIGH COURT OF KERALA AT ERNAKULAM 2024/KER/24401
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR. JUSTICE P.M.MANOJ

TUESDAY, THE 26TH DAY OF MARCH 2024 / 6TH CHAITHRA, 1946
OP (FC) NO. 161 OF 2024

AGAINST THE ORDER/JUDGMENT DATED IN OP NO.488 OF 2023 OF
FAMILY COURT, NORTH PARAVUR

PETITIONER/S:

NITHYAN MARTIN
AGED 39 YEARS
S/O M.J MARTIN MENACHERY HOUSE, KAVIL NADA, KOONAMMAVU P.O
ERNAKULAM, PIN - 683518

BY ADVS.
T.M.RAMAN KARTHA
MANJU R. KARTHA
M.S.SOUJATH
REVATHY M.A.
GREESHMA T.G.
SNEHA BRIGIT PRINCE

RESPONDENT/S:

1 NEENU THOMAS
AGED 33 YEARS, W/O NITHYAN MARTIN PUTHUSSERY HOUSE,
KOONAMMAVU P.O, ITC ROAD, NEAR MARKET, ERNAKULAM DISTRICT,
PIN - 683518

2 NAETHAN NITHYAN
AGED 9 YEARS, S/O NITHYAN MARTIN PUTHUSSERY HOUSE,
KOONAMMAVU P.O, ITC ROAD, NEAR MARKET, ERNAKULAM DISTRICT
(REPRESENTED BY MOTHER AND NATURAL GUARDIAN NEENU THOMAS,
AGED 33 YEARS, W/O NITHYAN MARTIN PUTHUSSERY HOUSE,
KOONAMMAVU P.O, ITC ROAD, NEAR MARKET, ERNAKULAM DISTRICT),
PIN - 683518

3 NORAH NITHYAN
AGED 6 YEARS, S/O NITHYAN MARTIN PUTHUSSERY HOUSE,
KOONAMMAVU P.O, ITC ROAD, NEAR MARKET, ERNAKULAM DISTRICT,
(REPRESENTED BY MOTHER AND NATURAL GUARDIAN NEENU THOMAS,



2024/KER/24401

O.P.(F.C.) .No.161 of 2024

2

AGED 33 YEARS, W/O NITHYAN MARTIN PUTHUSSERY HOUSE,
KONNAMMAVU P.O, ITC ROAD, NEAR MARKET, ERNAKULAM DISTRICT),
PIN - 683518
BY ADVS.
Paul k Varghese
A.A.GEETHA (K/227/2002)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26.03.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



RAJA VIJAYARAGHAVAN V & P.M. MANOJ , JJ.

O.P. (FC) No. 161 OF 2024

Dated this the 26th day of March 2024

JUDGMENT

Raja Vijayaraghavan, J.

This Original Petition is filed invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India challenging Exts.P18, P22, and P23 orders passed by the Family Court, North Paravur.

2. Short facts are as under:

A) The respondents 1 to 3 are the wife and minor children of the petitioner. The respondents approached the Family court and preferred an application in the original petition filed by them seeking interim maintenance to the wife and minor children.

B) The learned Family Court, by a well considered order, allowed the application and ordered the petitioner to pay maintenance at the rate



of Rs.20,000/- each per mensem to respondents 2 and 3 from the date of the petition, i.e., from 19.12.2022 onwards.

C) The above order granting interim maintenance was challenged by the petitioner before this Court. A Division Bench of this Court, by order dated 1.11.2023 in O.P.(FC) 629 of 2023, repelled the challenge and it was held that the order passed by the Family Court ordering maintenance to the minor children with effect from the date of the petition is perfectly legal and justified. While disposing of the matter, it was ordered by this Court that the parties are at liberty to seek reduction in the amount in case some material is placed on record, but not in the manner and mode. (sic)

D) Taking the parting observation of this Court as a license to prefer a review petition, the petitioner approached the Family Court even before the ink in the order passed by this Court had dried up. The Family Court held that there was no error apparent on the face of the record and dismissed the review petition by Ext.P22 order. It was also held that the review petition filed within a month of the order passed by this Court upholding the legality of the maintenance order was solely with a view to



protract the proceedings and to deny the maintenance to the children. The Family Court also took note of the fact that the wife and children had filed an application before the Court to strike off the pleadings for his contumacious conduct of not complying with the directions. It was held that the objective was to somehow interdict the above proceeding. On the same day itself, Ext. P23 order was passed by the Family Court allowing the application filed by the wife and minor children seeking to strike off the pleadings of the petitioner for non-compliance of the order of interim maintenance.

E) In this petition, the petitioner seeks to set aside Ext. P18 order granting interim maintenance, Ext. P22 order passed in the review petition and Exhibit P23 order passed by the Family Court striking off the pleadings of the petitioner.

3. Sri. Raman Kartha, the learned counsel appearing for the petitioner submitted that the impugned orders are illegal and have been passed in erroneous exercise of the powers conferred on the Family Court. It is submitted by the learned counsel that it was without adverting to the



relevant aspects that the petitioner was ordered to pay a huge sum by way of maintenance. According to the learned counsel, the family court proceeded on the basis that the petitioner was an affluent person which fact is incorrect. It is further submitted that the order passed by the Family Court striking off the defence of the petitioner for non-payment of interim maintenance cannot be sustained. Finally, it is submitted that this Court had granted liberty to the petitioner to approach the Family Court and it was on the strength of right so granted by this Court that the petitioner had preferred review petition.

4. In response, Sri. Paul K Varghese, the learned counsel appearing for the respondents, pointed out that the learned Family Court had elaborately considered the facts and circumstances, and contentions raised before issuing an order dated 24.07.2023 ordering interim maintenance to the children. The aforesaid order was challenged before this Court by the petitioner by preferring O.P.(FC) No.629/2023. A Division Bench of this Court, after elaborately considering the contention advanced by the petitioner, held that the order of the Family Court ordering interim maintenance of Rs.20,000/- per month to each of the children with effect



from 19.12.2022 is perfectly legal and justified. According to the learned counsel, a review petition was preferred later based on certain directions issued by this Court which according to the learned counsel was not maintainable. The review petition was filed on 21.11.2023, while the O.P(FC) was dismissed by a Division Bench of this Court on 01.11.2023. According to the learned counsel, there is no change of circumstances and at any rate, a review petition was not the proper remedy. It is submitted that despite the grant of numerous opportunities the petitioner herein had failed to pay the interim maintenance as ordered by the Family Court and it was in the said circumstances that the application was filed to strike off the pleadings. It is contended that the order passed by the Family Court is not liable to be interfered with. Reliance is placed by the learned counsel on the judgment rendered by this Court in **Muraleedharan**¹ to bolster his submission that the order passed by the learned Family Court striking off the pleadings of the petitioner for non-payment of the interim maintenance is in order.

5. We have carefully gone through the records and have

¹ Muraleedharan v Jincy 2018 (4) KHC 639



considered the submissions advanced.

6. The respondents 2 and 3 are the children of the petitioner and the said fact is not disputed. While ordering maintenance by Ext.P18 order, the Family Court had elaborately considered the facts and circumstances, the living standard of the mother and children, the expenses that the children are likely to incur, the cost of living, and also means and avocation of the petitioner herein. The well considered order was well appreciated by this Court and though a challenge was promptly made, the same was repelled. This Court held that the order was perfectly legal in all aspects and the order of maintenance was well justified and legal. Obviously while observing that the parties may seek reduction in the amount, all that was meant was that if there is any change of circumstances, it would be open to the parties to move the Court. The said observation was not a license for the petitioner to move a petition for revision. As rightly held by the Family Court, after this Court had upheld the order in all respects, there was no scope for filing a review petition. Of course, if there was any drastic change of circumstance warranting interference, the petitioner could have moved the Family Court. What has



however been done is to file a review petition within a month seeking to review the order. We have no doubt in our mind that the attempt of the petitioner is only to deny maintenance of his minor children one way or the other. However, the manner in which the petitioner chose to deny them the maintenance cannot be appreciated. In that view of the matter, no interference whatsoever is warranted to Exts.P18 and P22 order.

7. The petitioner has a contention that the learned Family Court was not justified in striking off the pleadings. We are afraid that we cannot accept the contention of the petitioner. A perusal of the order would disclose that the Family Court after noting the entire sequence of events came to the conclusion that despite the grant of numerous opportunities, no amount was paid by way of maintenance to the children by the petitioner. Relying on the law laid down in **Rajnesh**² and in **Shyju P.K.**³. The Family Court, however, proceeded to grant two weeks time to the petitioner to comply with the directions. The petitioner did not choose to avail the benefit of time granted.

² Rajnesh v Neha [2020 (6) KLT Online 1012]

³ Shyju P.K. Vs Nadeera [2021 (5) KLT 693]



8. In **Mahesh**⁴, a Division Bench of this Court, had occasion to consider the question as to whether the defence of the respondent in a divorce petition can be struck off on his failure to pay maintenance ordered under Section 125 of the Code. It was observed that the invocation of the power under Section 151 of the Code of Civil Procedure is a threat held out to unscrupulous litigants who do not respect the majesty of the Court and they will be doing so at their peril.

9. In **Muraleedharan**⁵, another Division Bench of this Court, after referring to the earlier precedents observed that the courts should exercise due care and caution before striking off the defence because it is a drastic action in law and should be the last resort and not the first resort. It was held that there should be a specific pleading in the petition that there is arrears of maintenance, that there is contumacious conduct on the part of the respondent, that the husband should be given an opportunity to be heard and that the court should be satisfied there is arrears of maintenance before an order to strike off the pleadings is passed.

⁴ Mahesh v. Roopa [2017 KHC 598]

⁵ Muraleedharan v. Jincy [2018 (4) KHC 639]



10. The Hon'ble Supreme Court in **Rajnesh**⁶ has declared the law and in paragraph 128 of the judgment has held that the Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children.

11. Having appreciated the facts of the instant case, we find that the failure of the petitioner to pay the amount ordered by way of maintenance to the minor children is wilful and contumacious conduct. We hold that the petitioner instead of complying with the order passed by the Family Court as upheld by this Court has filed frivolous petitions one after the other merely to protract the proceedings. The application for maintenance was filed on 19.12.2022 and the petitioner was ordered to pay maintenance at the rate of Rs.20,000/- each per mensem to his minor children from the date of the petition. All that he has paid is a sum of Rs.50,000/.

⁶ Rajnesh v. Neha, (2021) 2 SCC 324



12. Having considered the entire facts, we find absolutely no reason to interfere. This Original Petition is dismissed with a cost of Rs.20,000/ to be paid to respondents 2 and 3 within a period of three weeks from today. If the amount is not paid within the said time, the Family court shall forward a copy of this order to the District Collector, Ernakulam, and the said authority shall take all steps forthwith to recover the amount under the Kerala Revenue Recovery Act, 1968, and shall remit the amount with the Family Court to be paid to the minor children of the petitioner.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-
P.M. MANOJ.
JUDGE

ncd



APPENDIX OF OP (FC) 161/2024

PETITIONER EXHIBITS

Exhibit P1 COPY OF ORIGINAL PETITION (OP NO. 3639/2022 RENUMBERED AS OP NO.488/2023) OF THE FAMILY COURT, NORTH PARAVUR FILED ON 14.12.2022

Exhibit P2 COPY OF THE INTERIM APPLICATION (IA NO.9146/2022 RENUMBERED AS IA NO. 1/2023) FILED BY THE RESPONDENTS DT. 4.12..2022

Exhibit P3 COPY OF DETAILED OBJECTION IN OP NO. 488/2023 FILED BY THE PETITIONER DT. 29.06.2023

Exhibit P4 COPY OF COUNTER AFFIDAVIT IN IA NO. 1/2023 FILED BY THE PETITIONER DT. 8.6.2023

Exhibit P5 A TRUE COPY OF THE ASSETS AND LIABILITIES AFFIDAVIT FILED BY THE 1ST RESPONDENT DT. 14.12.23

Exhibit P6 A TRUE COPY OF THE ASSETS AND LIABILITIES AFFIDAVIT FILED BY THE PETITIONER DT.23.6.2023

Exhibit P7 TRUE COPY OF THE NET WORTH CERTIFICATE DT. 23.6.2023 OF THE PETITIONER FILED ALONG WITH EXT.P6

Exhibit P8 TRUE COPY OF THE INCOME TAX RETURNS OF THE PETITIONER FOR THE PERIOD 2022-23 DT. 27.07.2022

Exhibit P8(a) TRUE COPY OF THE INCOME TAX RETURNS OF THE PETITIONER FOR THE PERIOD 2023-24 DT. .6.06.2023

Exhibit P9 TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO. 43310181822 OF STANDARD CHARTERED BANK, PLARIVATTOM



Exhibit P10 TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO. 100004332104 OF INDUS IND BANK, M.G.ROAD BR, ERNAKUKLAM

Exhibit P11 TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO. 59109846434252 OF HDFC BANK, IYATTUMUKKU, ERNAKULAM

Exhibit P12 TRUE COPY OF THE STATEMENT OF ACCOUNTS OF ACCOUNT NO.20050100008763 OF THE FEDERAL BANK, KOONAMAVU BRANCH (NOW DORMANT)

Exhibit P13 TRUE COPY OF THE EMAIL RECEIVED FROM THE KARUR VYSYA BANK DT. 18.4.2023 WITH TRAILING MAILS REGARDING CLOSURE OF FIXED DEPOSITS BY THE RESPONDENT

Exhibit P14 TRUE COPY OF THE FIR IN CRIME NOS.282/2023 DT.21.3.2023 OF NORTH PARAVUR POLICE STATION Exhibit P15 TRUE COPY OF THE DEED OF PARTNERSHIP OF "MANGOES N COCONUTS" , IN WHICH THE PETITIONER IS A PARTNER DT. 24.03.2021

Exhibit P16 TRUE COPY OF THE FINAL ACCOUNTS OF THE FIRM "MANGOES N COCONUTS" AS ON 31.3.2023

Exhibit P17 TRUE COPIES OF THE STATEMENTS OF INDUSIND BANK FOR THE PERIOD FROM 4.2.2022 TO 16.7.2023 PROVING THE TRANSACTIONS BETWEEN THE 1ST RESPONDENT AND THE PETITIONER

Exhibit P18 A TRUE COPY OF THE ORDER OF THE FAMILY COURT, NORTH PARAVUR IN IA NO.1/2023 IN OP NO.488/2023 DT. 24.07.2023

Exhibit P19 A TRUE COPY OF THE JUDGEMENT OF THIS HON'BLE COURT IN OP(FC) NO. 629/2023 DT. 01.11.2023

Exhibit P20 A TRUE COPY OF THE REVIEW PETITION NO. 1 OF 2023 FILED BY THE PETITIONER ON 21.11.2023

Exhibit P21 A TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT IN I.A 9/2023 PRAYING FOR STRIKING OF THE PLEADINGS OF THE PETITIONER



HEREIN UNDER ORDER 6 RULE 16 OF THE CIVIL PROCEDURE CODE FOR NOT COMPLYING WITH EXHIBIT P18 ORDER ON 23.08.2023

Exhibit P22 TRUE COPIES OF THE ORDERS OF THE FAMILY COURT, PARAVUR IN R.P NO. 1/2023 DT. 29.11.2023

Exhibit P23 TRUE COPIES OF THE ORDERS OF THE FAMILY COURT, PARAVUR IN I.A NO. 9/2023 DT. 29.11.2023

RESPONDENT EXHIBITS

Exhibit R1 True copy of the order in O.P.(FC) No. 147/2022 of this Court dated 25.03.2022.

Exhibit R1(a) True copy of the order in O.P.(FC) No. 147/2022 of this case dated 06.04.2022.

Exhibit R1(b) True copy of the order in OP(FC) No 404 of 2022 of this Court dated 14.07.2022.

Exhibit R1(c) True copy of the order in W.P.(CrI.) No. 346/2023 of this court dated 11.09.2023.

Exhibit R1(d) True copy of the order in W.P.(CrI). No 858/2023 this Hon'ble Court dated 24.8.2023.

Exhibit R1(e) True copy of the press meeting of the petitioner in connection to the release of his film "Attention Please".

Exhibit R1(f) True copy of the details of the petitioner's other film by the name "Beware".

Exhibit R1(g) True copy of the details of the petitioner's other film by the name "Higitta" produced by his firm Mangoes n Coconuts.

Exhibit R1(h) True copy of the details of another film written and directed by the petitioner by the name "Thambai".



Exhibit R1(i) True copy of the relevant pages of the petitioner's Canadian Visa for the period from 4.1.2019 to 17.1.2028.

Exhibit R1(j) True copy of the relevant pages of the American Visa of the petitioner for the period from 16.02.2016 to 11.02.2026.

Exhibit R1(k) True copy of the LinkedIn in profile picture of the petitioner.

Exhibit R1(l) True copy of IA No 3/2023 in OP No 488/2023 dated 15.06.2023.

Exhibit R1(q) True copy of the OTT release data sold by the petitioner to Amazon Prime for Rs 50,00,000/-.

Exhibit R1(m) True copy of IA No 4/2023 in OP No 488/2023 dated 15.06.2023 before the Family Court, North Paravur.

Exhibit R1(o) True copy of the relevant pages of the statement of the account of the petitioner's maintained in Indus Ind Bank, M.G. Road, Ernakulam branch.

Exhibit R1(p) True copy of the poster of the petitioners film Higuita.

Exhibit R1(n) True copy of IA No 6/2023 in OP No 488/2023 dated 05.07.2023.