IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 7TH DAY OF NOVEMBER 2025 / 16TH KARTHIKA, 1947

OP (FC) NO. 503 OF 2025

AGAINST THE JUDGMENT DATED 16.08.2025 IN I.A.NO.1/2025 IN OP NO.498 OF 2025 OF FAMILY COURT, CHAVARA

PETITIONER/PETITIONER:

[redacted]

BY ADVS.
SRI.P.RAHUL
SHRI.RAJESH V. PRASAD
SMT.ABHINA L.
SMT.NAMITHA NEETHU BALACHANDRAN
SMT.SHYAMA S

RESPONDENTS/RESPONDENTS:

1 **SALIM**
AGED 56 YEARS
S/O. ABUSALI, SAMGAMAM (VETTU VADAKKTHIL), VENGARA MURI, THODIYOOR NORTH P.O, KALLELIBHAGOM VILLAGE, KARUNAGAPPALLY, KOLLAM., PIN - 690523

2 **SECRETARY**
MYNAGAPPALLY GRAMAPANCHAYAT, MYNAGAPPALLY P.O, KUNNATHUR TALUK, KOLLAM., PIN - 690519

3 **SECRETARY**
SOORANADU SOUTH GRAMAPANCHAYAT, PATHARAM P.O, SOORANADU SOUTH, KUNNATHUR TALUK, KOLLAM., PIN - 690522

4 SECRETARY
PAVITHRESWARAM GRAMAPANCHAYATH, PAVITHRESWARAM P.O,
KOTTARAKKARA TALUK, KOLLAM., PIN - 691507

5 JOINT DIRECTOR
L.S.G.D THEVALLY P.O, KOLLAM TALUK,
KOLLAM., PIN - 691009

6 SUB TREASURY OFFICER
KARUNAGAPPALLY, KOLLAM., PIN - 690518

BY ADVS.
SHRI.B.MOHANLAL
SMT.P.S.PREETHA
SHRI.MOTTY JIBY VASUDEVAN
SHRI.ABIJITH M.
SMT. AVANI NAIR
SMT.JAYAPRABHA ARJUN
SMT.PRAVEENA T.

THIS OP (FAMILY COURT) HAVING COME UP FOR HEARING ON 22.10.2025, THE COURT ON 07.11.2025 DELIVERED THE FOLLOWING:

CR

DEVAN RAMACHANDRAN & M.B.SNEHALATHA, JJ.

OP(FC) No.503 of 2025

Dated this the 7th November, 2025

JUDGMENT

M.B.Snehalatha, J

The point for consideration in this petition is whether the retirement benefits, such as pension, gratuity, receivable by the 1st respondent/father is liable to attachment under Order XXXVIII Rule 5 of the Code of Civil Procedure (for short, CPC) in a claim for maintenance and educational expenses by his own minor daughter.

2. The minor daughter, through her next friend and mother, filed O.P.No.498/2025 before the Family Court, Chavara, against her father/R1, claiming maintenance and educational expenses past and future, alleging that her father/R1 herein failed to provide maintenance and educational expenses to her. Her case is that, after the divorce between her parents, she is residing with her mother. Presently, she is a Plus Two student. Her father/R1 is working as LD Clerk in Panchayat Department, and he is due to retire on 31.05.2025; that though he has got

sufficient means and income, he failed to provide any maintenance to her and failed to meet her educational expenses. Though in M.C.(DV)No.104/2009, the Judicial First Class Magistrate Court, Karunagappally, had ordered to pay maintenance at the rate of ₹2,000/- per month, even the said meagre amount was not paid by R1 and she has filed C.M.P.No.4699/2024 before the Judicial First Class Magistrate Court, Karunagappally. Petitioner is now studying in a Public School at Kozhikode and has already incurred an expense of ₹2,74,900/- towards tuition and hostel fees. After completion of the Plus Two course, she requires a sum of ₹3 lakhs as course fees for further studies and ₹10,000/- per month towards hostel fees. Petitioner requires ₹20,000/- per month for the next three years towards maintenance. 1st respondent – father is earning more than ₹55,000/- per month. His pay has been revised and he will receive approximately ₹55 lakhs as pay revision arrears, retirement benefits, DA arrears, etc.

In the O.P petitioner has claimed an amount of ₹39,94,000/- towards past and future maintenance and educational expenses. She sought attachment before judgment of

the retirement benefits due to the 1st respondent on the ground that with a view to defeat the decree, which may be passed against him, R1 is taking hasty steps to withdraw and divert his entire retirement benefits for his own needs.

3. 1st respondent/father resisted the petition, disputing petitioner's claim. He contended that as he was suffering from various illnesses, he was on leave for a long period and therefore, he would get only nominal amount as retirement benefits. It was contended that he has no house or landed property; that he has to take care of his aged parents. He also contended that his last drawn salary was only ₹16,000/- and he has no means to pay ₹20,000/- per month towards maintenance as claimed by the petitioner. Further, it was contended that his retirement benefits have not yet been finally assessed or communicated by the authorities and the claim of the petitioner for ₹39.94 lakhs is baseless and therefore, he sought for dismissal of the petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

5. Admittedly, petitioner is the minor daughter of the 1st respondent. It is also not in dispute that presently she is a Plus

Two student. According to the petitioner, as per order in M.C (DV).No.104/2009 of Judicial First Class Magistrate Court, Karunagappally, maintenance at the rate of ₹2,000/- per month was ordered to be paid to her; but her father/R1 committed default in payment of even the said paltry amount and therefore she was constrained to file C.M.P.No.4699/2024 for realization of the arrears in the said M.C.

6. The case of the petitioner is that, her father/R1, was working as LD Clerk in the Panchayath Department and he retired from service on 31.5.2025 and he would get an amount of ₹55 lakhs as retirement benefits; that with a view to defeat her claim for maintenance and educational expenses, he is trying to withdraw the said funds and to divert for his own needs.

7. In O.P.No.498/2025, petitioner's case is that towards tuition and hostel fees, she has already incurred an amount of ₹2,74,900/-; that after completion of Plus Two, she requires another sum of ₹3 lakhs as course fees for further studies and ₹10,000/- per month towards hostel fees. According to her, she requires ₹20,000/- per month towards maintenance for the next three years. Her specific case is that her father has not looked

after her and has not paid any maintenance to her from January 2010 onwards and therefore he is liable to pay ₹15,000/- per month towards maintenance for the last 15 years.

8. Admittedly, 1st respondent - father was working as LD Clerk in the Panchayat Department and he retired from service on 31.05.2025.

9. I.A.No.1/2025, namely, the petition for attachment before judgment was dismissed by the Family Court on the ground that retirement benefits are not attachable in view of the exemption under proviso to Sec 60 (1)(g) CPC. In reaching the said finding, the Family Court placed reliance on *Radhey Shyam Gupta v. Punjab National Bank and another* [(2009) 1 SCC 376].

10. The learned counsel for the petitioner contended that the dictum in *Radhey Shyam* (cited supra) has no application to the facts of this case since the claim is made by the minor daughter seeking maintenance, and it is not a debt, and she cannot be treated as a creditor so as to claim exemption from attachment under Section 60(1)(g) CPC.

11. A person's obligation to maintain his minor children is a fundamental, legal and constitutional duty. The object of

payment of maintenance is to prevent vagrancy and destitution. The right of a wife or a minor child to maintenance supersedes the employee's right to claim exemption under Section 60(1)(g) CPC. Articles 15(3) and 39 of the Constitution of India direct the state to ensure the protection and welfare of children and women. Maintenance laws act as instruments to give life to these constitutional directives. In *Ramesh Chander Kaushal v. Veena Kaushal and Ors (AIR 1978 SC 1807)* the Apex Court held that an order directing payment of maintenance is a measure of social justice and specially enacted to protect women and children, and it falls within the sweep of Article 15(3) of the Constitution of India and reinforced by Article 39.

12. Section 60(1)(g) CPC provides that stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pension are not liable to attachment and sale in execution of a decree.

13. The purpose of the said exemption is to protect

employees after retirement, ensuring they have the means to sustain themselves and when their earning capacity comes to an end. However, this protection cannot be used as a shield against fulfilling a statutory and moral obligation towards dependents.

14. The object and purpose behind Section 60(1)(g) of the CPC is to protect the said amount for utilizing the same for the benefits of the employee and family and to prevent vagrancy and destitution of the family members of the employee.

15. The dictum in *Radhey Shyam* (cited supra) that even after retiral benefits obtained by the employee had been converted into Fixed Deposit it did not lose its essential character of comprising the retiral benefits of the appellant, and could not, therefore, be attached in view of the Proviso (g) to Section 60 (1) of CPC is not applicable in the facts of the case as the facts in hand are clearly distinguishable. It was a case wherein an execution proceedings initiated by the bank against the appellant therein, the Apex Court held that pension and gratuity, which were converted into a fixed deposit, shall represent the retiree's essential retirement benefits, which are protected by law to ensure a person's livelihood after retirement.

16. Whereas, in the case at hand, the claim is made by his own minor daughter seeking maintenance and educational expenses, both past and future. She cannot be equated with a creditor who is attaching the retirement benefits of an employee for a debt due from the employee. She is undoubtedly the part of family of the 1st respondent; and therefore, the argument advanced by the learned counsel for the 1st respondent that the retirement benefits of R1 is not attachable towards her plea for maintenance, in view of the exemption under Section 60(1)(g) CPC, is untenable.

17. Accordingly, this O.P(FC) stands allowed; the impugned order in I.A.No.1/2025 in O.P.No.498/2025 of Family Court, Chavara is set aside and the Family Court is directed to reconsider and dispose of I.A.No.1/2025 afresh, after hearing both sides, in the light of the findings made herein, for which both sides shall appear before the Family Court, Chavara on 18.11.2025.

Sd/-
DEVAN RAMACHANDRAN
JUDGE
Sd/-
M.B.SNEHALATHA
JUDGE

ab

AP**PENDIX OF OP (FC) 503/2025**

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE O.P NO. 498/2025 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, CHAVARA**
Exhibit P2	**TRUE COPY OF I.A. NO. 1 OF 2025 IN O.P. NO. 498 OF 2025 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, CHAVARA**
Exhibit P3	**TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT IN I A NO. 1 / 2025 IN O.P. NO. 498/2025 ON THE FILE OF THE FAMILY COURT, CHAVARA**
Exhibit P4	**TRUE COPY OF THE JUDGMENT DATED 07.08.2025 IN O.P.(FC) NO. 434/2025**
Exhibit P5	**TRUE COPY OF THE ORDER DATED 16.08.2025 IN I.A. NO. 1/2025 IN O.P. NO. 498/2025**

RESPONDENTS EXHIBITS: NIL