



R.P (FC) No.69 of 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 8TH DAY OF DECEMBER 2023 / 17TH AGRAHAYANA, 1945

RPFC NO. 69 OF 2010

AGAINST THE ORDER/JUDGMENT IN CMP 564/2009 IN MC 367/2005 OF

FAMILY COURT, KOTTAYAM

REVISION PETITIONER/S:

- 1 SAJANI, W/O.SABU KORTTHUSSERIL, AGED 30 YEARS
KADAKKARAPPALLY PANCHAYAT, KADAKKARAPPALLY VILLAGE.
- 2 SABNA, D/O.SAJANI KORTTHUSSERIL
KADAKKARAPPALLY PANCHAYAT,, KADAKKARAPPALLY
VILLAGE,, REPRESENTED BY HER MOTHER SAJANI.

BY ADVS.

SRI.M.R.SARIN

SRI.BIJU GOPAL

SRI.M.R.SASITH

SRI.K.K.SUNIL KUMAR IDUKKI

RESPONDENT/S:

SABU, AGED 35 YEARS, S/O.SREEDHARAN
PUTHIRITHARA VEETIL, EDAYAZHAM KARAYIL, VECHOOOR
VILLAGE, VAIKOM POLICE STATION.

BY ADV SRI.UNNI. K.K. EZHUMATTOOR

THIS REV.PETITION (FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 08.12.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



C.S DIAS,J.

R.P (FC) No.69 of 2010

Dated this the 8th day of December, 2023

ORDER

The revision petition is filed questioning the legality and correctness of the order in CMP No.564/2009 in M.C No.367/2005 of the Family Court, Kottayam at Ettumanoor. The revision petitioners were the petitioners and the respondent was the respondent in the above application.

Brief facts

2. The revision petitioners had filed M.C No.367/2005 before the Family Court, Alappuzha, against the respondent, under Sec.125 of the Code of Criminal Procedure (in short, “Code”), for an order of



maintenance. The Family Court, Alappuzha, by order dated 21.6.2007, allowed the application in part by ordering the respondent to pay the revision petitioners Rs.750/- each per month from the date of petition (19.4.2005). Even though the revision petitioners applied for certified copy of the order on 26.6.2007, that is five days after the passing of the order, the revision petitioners received the certified copy of the order only on 6.12.2008. By this time, the territorial jurisdiction of the place where the revision petitioners were residing was transferred to the Family Court, Kottayam at Ettumanoor. On 3.8.2009, the revision petitioners filed CMP No.564/2009 under Sec.128 of the Code, to recover the arrears of maintenance from the respondent for the period from 19.4.2005 to



18.7.2009 claiming Rs.76,500/-. The Family Court, by the impugned order, permitted the revision petitioners to only recover the arrears of maintenance from 21.6.2007 till 18.7.2009, on the ground that the execution application was filed beyond one year as laid down under the proviso to sub-sec(3) of Sec.125 of the Code. The impugned order is erroneous and wrong. Hence the revision petition.

3. Heard; Sri.M.R Sarin, the learned counsel appearing for the revision petitioners and Sri.Unni.K.K the learned counsel appearing for the respondent.

4. Is there any illegality, impropriety or irregularity in the impugned order?



5. The revision petitioners' application for maintenance was ordered by the Family Court, Alappuzha on 21.6.2007, by directing the respondent to pay the revision petitioners Rs.750/- each per month from 19.4.2005. It is apparent from the endorsement on the certified copy of the order, that the application for the certified copy of the order was filed on 26.6.2007. However, for only reasons known to the Family Court, the certified copy of the order was issued to the revision petitioners only on 6.12.2008.

6. When the revision petition came up for consideration on 28.11.2023, this Court had called for a report from the Family Court to explain the reason for the inordinate delay in issuing the certified copy of



the order. The learned Judge of the Family Court, Alappuzha, by communication dated 5.12.2023, has informed this Court that, pursuant to the OM 4232/23 dated 10.10.2023 issued by the District Court, Alappuzha, the part-II and part-III records in MC No.367/2005 were destroyed; therefore, the reason for the delay in issuing the certified copy of the order could not be ascertained .

7. In the light of the endorsement on the certified copy of the order, it is evident that the application was submitted by the revision petitioners on 26.6.2007 as per the copy application No.A535 and the certified copy of the order was issued only on 1.12.2008.



8. The first proviso to sub-sec(3) of Sec.125 of the Code stipulates that no warrant shall be issued for recovery of any amount due under Sec.125, unless the application is filed in Court to levy such amount within one year from the date on which it becomes due.

9. In the instant case, Annexure A2 application was filed on 3.8.2009, i.e., well within one year from the date on which the certified copy of the order was issued to the revision petitioners. It is only on the date the order is issued, can the amount fall due, especially when the applications are disposed of after a considerable time period and ordering maintenance to be paid from the date of application.



10. Unfortunately, the Family Court has without assigning any reason in the order held that the revision petitioners are only entitled for arrears of maintenance for a period of 12 months from the date of order, i.e., 21.6.2007, and, consequentially, declined the revision petitioners' claim for arrears of maintenance from 19.4.2005 till 20.6.2007 that is for more than one year. This is obviously an error and impropriety committed by the Family Court.

11. The learned counsel for the revision petitioners, relying on the decision of the Hon'ble Supreme Court in **Jang Singh vs Brijlal and others** [1966 KHC 670], has rightly contended that a mistake committed by the Court should not prejudice a litigant, which finds a place in the legal *maxim Actus*



curiae neminem gravabit. The instant case is a classic example for the above maxim.

12. It needs no second thought to understand that there was laches on the part of the Family Court in belatedly issuing the certified copy. But, that cannot be a reason to penalise the revision petitioners, who have done no wrong. The revision petitioners are entitled to the entire arrears of maintenance claimed in Annexure A2 application. Even otherwise, as already observed, the first proviso to sub-sec (3) of Sec.125 only prohibits the issuance of a warrant and does not debar the filing of the application. Be that as it may, the reasons for rejecting the claim for one year is not stated. Therefore, I hold that the impugned order is erroneous and wrong and is liable to be set aside.



13. Resultantly, the revision petition is allowed as follows:

(i) The impugned order rejecting the revision petitioner's claim to recover the arrears of maintenance from 19.4.2005 to 20.6.2007 is set aside.

(ii) Annexure A2 application is allowed, by permitting the revision petitioners to recover from the respondent the arrears of maintenance from 19.4.2005 to 18.7.2009.

(iii) The respondent is permitted to pay the arrears of maintenance as ordered by this Court in two equated and successive instalments commencing from 8.2.2024.

(iv) If the respondent fails to pay the ordered amount, the Family Court shall initiate coercive



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proceedings against the respondent, in accordance with law, to recover the ordered amount.

sd/-

sks/8.12.2023

C.S.DIAS, JUDGE