

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945

OP(CRL.) NO. 380 OF 2023

AGAINST THE ORDER/JUDGMENT IN MC NO.60/2018 OF
FAMILY COURT, KALPETTA

PETITIONER/PETITIONER:

ASHKAR ALI
AGED 30 YEARS
CHENOTH HOUSE, KELTRON VALAVU,
MADAKKIMALA P.O., VYTHIRI TALUK,
WAYANAD DISTRICT, PIN - 673122

BY ADV C.K.SREEJITH

RESPONDENTS/ RESPONDENTS:

- 1 SUMAINA
AGED 28 YEARS
RAROTH HOUSE, KANIYAMBETTA P.O.
VYTHIRI TALUK,
WAYANAD DISTRICT, PIN - 673121
- 2 MUHAMMED ALTHAF (MINOR),
AGED 5 YEARS, S/O. ASHKAR ALI,
REP. BY ITS MOTHER SUMAINA, RAROTH HOUSE,
KANIYAMBETTA P.O. VYTHIRI TALUK,
WAYANAD DISTRICT, PIN - 673121

BY ADV CELINE JOSEPH

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
30.06.2023, ALONG WITH OP(Cr1.).383/2023, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

O.P.(Crl.) Nos. 380 & 383 of 2023

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BY ADV CELINE JOSEPH

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
30.06.2023, ALONG WITH OP(Cr1.).380/2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of June, 2023

The petitioner is the respondent in M.C.No.60/2018 on the files of the Family Court, Kalpetta, filed by the petitioner's wife and child/respondents herein, claiming monthly maintenance allowance. As the petitioner remained absent despite issuance of service, the maintenance case was allowed exparte and the petitioner directed to pay monthly maintenance to the 1st respondent at the rate of ₹12,000/- and to the 2nd respondent at the rate of ₹8,000/-. Based on the award, the respondents filed two execution petitions claiming arrears of maintenance for the period from 11/12/2020 to 11/09/2021 and 10/04/2018 to 10/12/2018 respectively.

2. On coming to know about the execution proceedings, the petitioner filed an application for setting aside the exparte order, after condoning the delay of 1432 days. By the orders impugned in these original petitions, the Family Court allowed the delay condonation application and the petition for setting aside the exparte order on condition of the petitioner depositing 50% of the

amount due towards arrears of maintenance.

3. In the meanwhile, the petitioner was arrested and detained in custody from 24/11/2022 till his release pursuant to this Court's order dated 25/05/2023.

4. Learned Counsel for the petitioner submitted that the petitioner's absence before the Family Court was for the reason that he was working outside the State at that point of time. It is contended that the period of detention undergone for non-payment of the maintenance allowance ought to be reckoned while deciding the balance amount due towards arrears of maintenance. It is submitted that the petitioner is a daily wage laborer and it is impossible for him to pay consolidated monthly maintenance of ₹20,000/-. Taking the above factor into consideration, the onerous condition of depositing 50% of the arrears of maintenance for getting the delay condoned and the exparte order set aside ought to be modified, is the final submission.

5. Learned Counsel for the respondents stoutly opposed the prayer for modification and submitted that the petitioner had willfully neglected to maintain the respondents and deliberately

failed to pay maintenance, in spite of the Family Court's order.

6. Taking into account the petitioner's detention for almost six months, for non-payment of arrears of maintenance and payment of ₹20,000/- towards the arrears, pursuant to this Court's direction, the condition imposed by the Family Court is modified as under;

The petition for condonation of delay shall be allowed and the ex-parte order set aside on the petitioner depositing 20% of the arrears due as on date. The said amount shall be deposited within one month and receipt evidencing such payment/remittance shall be produced along with certified copy of this judgment. On deposit, the amount shall forthwith be released to the respondents.

The original petitions are disposed of as above.

APA

Sd/-
V.G.ARUN
JUDGE

O.P.(Crl.) Nos. 380 & 383 of 2023

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APPENDIX OF OP(CRL.) 380/2023

PETITIONER'S EXHIBITS

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| Exhibit P1 | THE TRUE COPY OF THE ORDER PASSED IN CMP. 279/2022 AND 280/2022 IN MC. NO. 60/2018 ON THE FILE OF FAMILY COURT, KALPETTA DT. 24/11/2022 |
| Exhibit P2 | THE TRUE COPY OF THE CALCULATION STATEMENT DT. 23/1/2023 |
| Exhibit P3 | THE TRUE COPY OF THE INTERIM ORDER PASSED IN O.P. (CRL.) 232/2023 ON THE FILE OF HON'BLE HIGH COURT OF KERALA, ERNAKULAM DT. 17/3/2023 |

O.P.(Crl.) Nos. 380 & 383 of 2023

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