

SUPERVISORY JURISDICTION

Mr. Justice Devan Ramachandran and Mrs. Justice M.B. Snehalatha

O.P. (FC) No.624 of 2025

2025 November 17

Naseema Petitioner

v.

Abdulla Respondent

Original petition was filed by petitioner aggrieved by the order of the Family Court, wherein the Court refused to strike off the pleadings of the respondent, in spite of the fact that respondent did not honor the order of interim maintenance. Petitioner contended that refusal to honour the order of interim maintenance has the effect of fiscally asphyxiating her and the Family Court ought to have struck off the pleadings/defense. Allowing the petition, the Court;

Issue for Consideration

Whether the non-payment of interim maintenance would result in the striking off of the pleadings ?

Constitution of India—Articles 21 and 227—When the ordered maintenance is fundamental for the petitioner to sustain, and when her life itself stands prejudiced on account of the default of the respondent, any liberty for him to contest a matter would have to depend upon his willingness to honor it and in no other—Right to obtain maintenance by a spouse from the other, as statutorily ingrained, stems from the right to live with dignity, which is on par with the fundamental right to life.

Held:

It has been well settled, without requirement for us to restate, that the right to obtain maintenance by a spouse from the other, as statutorily ingrained, stems from the right to live with dignity. This obviously, therefore, elevates itself on par with the fundamental right to life; and axiomatically, when the spouse ordered to pay maintenance willfully and deliberately refuses to do so, such refusal can only be construed to be an affront to such inviolable right. Going by the facts of this case, the respondent concedes that he has defaulted payment of the ordered interim maintenance to the petitioner in M.C.No.217/2021, which has been found to be deliberate by the learned Family Court, to thus strike off his pleadings in it. In such admitted scenario, it is stupefying how the respondent expects the petitioner to live, much less with dignity; and, in that perspective, one can never blame the latter in saying that the attempt of the former is to choke her of existence. When the petitioner is conceded to have no other means and when her right to live itself is denuded by the refusal of the respondent to pay her maintenance, we cannot accept his

explanation that he is already suffering a detriment – his defence having been struck off in M.C.No.217/2021. When the ordered maintenance is fundamental for the petitioner to sustain; and when her life itself stands prejudiced on account of the default of the respondent, any liberty for him to contest a matter would have to depend upon his willingness to honor it and in no other. The learned Family Court, as rightly pointed out by Sri.K.P.Sudheer, has refused to strike off the pleadings of the respondent in O.P.No.601/2021, solely because such an order has been issued in M.C.No.217/2021. In our view, the learned Court has erred because, as said above, when the respondent voluntarily refuses to make payment under a valid order, his right to contest any matter surely requires to be enervated. (*Paragraph 6, 7 and 8*)

List of Keywords :

Interim maintenance, Strike off, Payment, Arrears.

Case Arising From:

Against the Order in I.A. No.6 of 2025 in O.P. No.601 of 2021, Family Court, Tirur.

Appearance of Parties:

Sri. Adithya Varma S., Sri. Ramees P.K. and Sri. Abdussamad K.K. . . . for petitioner

Sri. K.P. Sudheer and Smt. Bhavana J. Menon . . . for respondents

JUDGMENT

The Judgment of the Court was delivered by **Devan Ramachandran, J.**—The marital lives of the parties – who were married on 06.09.1981 – has soured and taken a turn for the worse, with the petitioner – wife having filed M.C.No.217/2021 against the husband before the learned Family Court, Tirur, seeking maintenance for herself; as also O.P.No.601/2021, again before the same Court, praying for a decree directing the respondent to return her gold ornaments and patrimony.

2. As conceded, the learned Court issued an order in M.C.No.217/2021, directing the respondent to pay a certain sum to the petitioner as interim maintenance, which he has failed to honour; leading to his pleadings in the said case having been struck off. The petitioner thereupon filed an application in O.P.No.601/2021 before the learned Family Court, seeking that the pleadings of the respondent in this case also be struck off; but which has been rejected through Ext.P10. The petitioner assails Ext.P10 order as being illegal and unfair.

3. Sri.Adithya Varma S. - learned counsel for the petitioner, contended that the learned Family Court has refused to strike off the pleadings of the respondent in this case, solely because such had been done in M.C.No.217/2021. He argued that, the admitted factum of the defence of the respondent having been struck off in the afore M.C. obligated the learned Court to have done so in this case also, since his refusal to honour the order of interim maintenance has the effect of fiscally asphyxiating his client, she being without any

other resources to survive and sustain herself.

4. Sri.K.P.Sudheer – learned counsel for the respondent, in response, however, submitted that the learned Family Court is without error in having issued Ext.P10 because, on account of his client's default in paying the interim maintenance as ordered in M.C.No.217/2021, his pleadings therein have already been struck off. He argued that his client cannot be subjected to the same prejudice in every case; and prayed that, therefore, this Original Petition be dismissed.

5. We have considered the afore submissions very carefully because, though within a small compass, this case throws up very crucial and relevant legal and ethical issues.

6. It has been well settled, without requirement for us to restate, that the right to obtain maintenance by a spouse from the other, as statutorily ingrained, stems from the right to live with dignity. This obviously, therefore, elevates itself on par with the fundamental right to life; and axiomatically, when the spouse ordered to pay maintenance willfully and deliberately refuses to do so, such refusal can only be construed to be an affront to such inviolable right.

7. Going by the facts of this case, the respondent concedes that he has defaulted payment of the ordered interim maintenance to the petitioner in M.C.No.217/2021, which has been found to be deliberate by the learned Family Court, to thus strike off his pleadings in it. In such admitted scenario, it is stupefying how the respondent expects the petitioner to live, much less with dignity; and, in that perspective, one can never blame the latter in saying that the attempt of the former is to choke her of existence. When the petitioner is conceded to have no other means and when her right to live itself is denuded by the refusal of the respondent to pay her maintenance, we cannot accept his explanation that he is already suffering a detriment – his defence having been struck off in M.C.No.217/2021. When the ordered maintenance is fundamental for the petitioner to sustain; and when her life itself stands prejudiced on account of the default of the respondent, any liberty for him to contest a matter would have to depend upon his willingness to honor it and in no other.

8. The learned Family Court, as rightly pointed out by Sri.K.P.Sudheer, has refused to strike off the pleadings of the respondent in O.P.No.601/2021, solely because such an order has been issued in M.C.No.217/2021. In our view, the learned Court has erred because, as said above, when the respondent voluntarily refuses to make payment under a valid order, his right to contest any matter surely requires to be enervated.

9. Presumably being aware of the mind of this Court as afore, Sri. K.P. Sudheer intervened to say that his client is willing to pay the entire arrears of maintenance – which, in any case, will be a small amount of less than Rs.1 Lakh as of now – on or before 31.12.2025.

10. Sri.Adithya Varma requested that the afore time frame be restricted to a lesser period. But, we are of the view that the above request requires our consideration.

In the afore circumstances, we allow this Original Petition and set aside Ext.P10; and consequently, allow I.A.No.6/2025, thus ordering that the pleadings of the respondent in O.P.No.601/2021 will stand struck down; however, only if he does not make payment of the entire arrears of interim maintenance, as ordered in M.C.No.217/2021, on or before 31.12.2025.

Result of the Case:

Allowed.

Headnote prepared by A.R.
