

(1995) 06 KL CK 0011
In the High Court Of Kerala
Case No : M.F.A. No. 1260 of 1994

K.D. Thankkappan Nair

APPELLANT

Vs

B.A. Presanna Kumari and Others

RESPONDENT

Date of Decision : 30-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Criminal Procedure Code, 1973 (CrPC) — Section 397(2)
Family Courts Act, 1984 — Section 19
Hindu Marriage Act, 1955 — Section 9

Citation : (1995) 06 KL CK 0011

Hon'ble Judges : K.T. Thomas, J; K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : T.A Narayanan Nair, for the Appellant; V. Chithambaresh and T.C. Suresh Menon, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Section 19 of the Family Courts Act, 1984 (for short "the Act") forbids appeal as well as revision against any interlocutory order. What is the width of the expression "interlocutory order" in the context of that provision? The question needs answer in this appeal filed against an order passed by a Family Court. The question arose in the following backdrop: Appellant is the husband of the first respondent. He filed an application under Sec. 9 of the Hindu Marriage Act for a decree for restitution of conjugal rights. When first respondent claimed maintenance allowance pendente lite, the lower court directed the appellant to pay such maintenance allowance to the first respondent and her children. The case was subsequently transferred to the Family Court. As the appellant failed to pay the maintenance allowance, first respondent resorted to steps for realisation of the amount. One such step was to attach the commission or salary due to the appellant from Life Insurance Corporation of India. On 12-8-94 the Family Court Judge passed the following order: "Attach salary to the extent of Rs. 1,500/- per month". This appeal is filed in challenge of the said order.

2. Order 21 Rule 58 of the CPC empowered the court which attached any property to adjudicate upon any claim or objections preferred against such attachment. Sub-rule (4) says that where any claim or objection has been adjudicated upon, the order made thereon "shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree". In this case appellant has not resorted to the procedure envisaged in Rule 58 of Order 21. Even if he had resorted to it the appealability of the resulting order now stands curtailed by Chapter-V of the Family Court Act.

3. Sec. 19 of the Act is the solitary provision included in Chapter-V. Sub-section (1) provides an appeal against "every judgment or order of a Family Court to the High Court both on facts and on law", but an interlocutory order is excluded from the ambit of the sub-section. Revisional power of the High Court is provided in sub-section (4). But there is a restriction in the provision that such revisional powers shall not be exercised in relation to an interlocutory order. To make the position further clear sub-section (5) contains the prohibition to the effect that "except as aforesaid no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court". So an interlocutory order is neither appealable nor revisable in view of Sec. 19 of the Act.

4. It is contended by the learned counsel that the impugned order is not an interlocutory order since the order has a bearing on appellant's right to get his salary. According to the counsel, an order affecting the right of a person has not been treated as an interlocutory order by the courts.

5. In Webster's "New World Dictionary" the word "interlocutory order" has been defined as an order other than final decision. This expression "interlocutory order" has appeared differently in different statutes and received different construction by the courts depending upon the context and setting in which the expression has been used. Under Sec. 397(2) of the Code of Criminal Procedure, revisional jurisdiction is excluded in relation to an interlocutory order. However, the expression "interlocutory order" appearing in the said section has received wider meaning in a number of decisions (vide *Amar Nath and Others Vs. State of Haryana and Another*, ; *Madhu Limaye Vs. The State of Maharashtra*, and *Haryana Land Reclamation and Development Corporation Ltd. Vs. State of Haryana and Another*,)

6. It is advantageous to see how a similar interdict contained in Sec. 11(1) of the Special Courts Act, 1979 was interpreted. As per it, the appellate jurisdiction is taken away in respect of an interlocutory order. Supreme Court has held in *V.C. Shukla Vs. State through C.B.I.*, while construing the scope of that expression in the said context that if the order does not terminate the proceedings or if the objection against the order is upheld and consequently the proceedings would come to an end such an order is interlocutory order. A Division Bench of this Court has considered the revisability of an order framing charge in *Prabhakaran v. Excise Circle Inspector* (1992 (2) KLT 860) It was held that if the objection against framing charges is upheld and consequently the criminal proceedings

would terminate the order would be interlocutory order for the purpose of deciding the maintainability of revision. A larger Full Bench of this Court has considered the same question in the light of Sec. 5(1) of the Kerala High Court Act, 1958 in K.S. Das v. State of Kerala (1992 (2) KLT 358) and held that interlocutory orders may purely be procedural orders and not the orders which affect or touch upon the rights of the parties or matters of moment, though the main case is not disposed of. With the help of legal principles discussed in the above decisions we can gauge the amplitude of the expression "Interlocutory order" in Sec. 19 of the Act. We bear in mind that what is banned under the said Chapter is not only appeals against interlocutory orders but even the revisional jurisdiction is also foreclosed in the sweep. Of course, it is unusual that in a statute wherein appellate jurisdiction is closed then revisional jurisdiction is also closed in respect of the same category of orders. What would have been the legislative intent in providing such a ban. The parties in Family Courts very often include destituted and orphaned wives and/or children and perhaps poor widows also. If appeal or revision is provided against interlocutory order the proceedings in the Family Court could successfully be scuttled by rich and contumacious opposite parties by taking the matter to the High Court against any order passed during interlocutory stages. Legislature would have intended to prevent it. In that perspective it can be construed that the interlocutory order envisaged in Chapter-V of the Act is an order other than final orders. Hence the meaning of interlocutory order in sec. 19 shall be understood as an order which is not a final order.

Viewed from the aforesaid angle, we hold that the impugned order is purely an interlocutory order and hence no appeal will lie. Consequently, we reject this appeal as not maintainable.