

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application under and in terms of Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Anagipura Padmini Jayasinghe
Warakakolla, Meegama, Darga Town.

Applicant

Case No. CA (PHC) 112/2012
H.C. Kaluthara Case No. 51/2009 (REV)
M.C. Mathugama Case No. 33513/Maintenance

Vs.

Pemaththu Hewage Rathnaweera
Kambarawatta, Athkandura.

Respondent

AND BETWEEN

Anagipura Padmini Jayasinghe
Warakakolla, Meegama, Darga Town.

Applicant-Petitioner

Vs.

Pemaththu Hewage Rathnaweera
Kambarawatta, Athkandura.

Respondent-Respondent

AND NOW BETWEEN

Pemaththu Hewage Rathnaweera
Kambarawatta, Athkandura.

Respondent-Respondent-Appellant

Vs.

Anagipura Padmini Jayasinghe
Warakakolla, Meegama, Darga Town.

Applicant-Petitioner-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Ranga Dayananda for Respondent-Respondent-Appellant

Applicant-Petitioner-Respondent absent and unrepresented

Written Submissions tendered on:

Respondent-Respondent-Appellant on 16.10.2018

Decided on: 07.02.2020

Janak De Silva J.

This is an appeal against the order of the learned Provincial High Court Judge of the Western Province holden in Kaluthara dated 26.07.2012.

The question before Court is whether the Magistrate's Court has jurisdiction in terms of the Maintenance Act No. 37 of 1999 (Act) to enforce an order for alimony made by the District Court. The Respondent-Respondent-Appellant (Appellant) and the Applicant-Petitioner-Respondent (Respondent) got married on 24.10.1996 and have one son. The Respondent instituted action against the Appellant in the District Court of Mathugama in case no. 2881 seeking a divorce on the ground of malicious desertion and on 02.11.2006 judgment was entered in favour of the Respondent who was also granted Rs. 300,000/= as permanent alimony.

The Appellant failed to pay the permanent alimony and the Respondent instituted action in M.C. Mathugama in terms of the Act to recover the sum of Rs. 300,000/= which was disallowed. The Respondent moved in revision to the Provincial High Court Judge of the Western Province holden in Kaluthara which allowed the application. Hence this appeal.

The learned High Court Judge held that the Magistrate's Court has jurisdiction to recover any alimony ordered by the District Court in terms of section 624A of the Civil Procedure Code which reads:

"An order for alimony or maintenance made under this chapter may be enforced either in accordance with the provisions of this Ordinance or in the manner provided in the Maintenance Ordinance."

The parties are not at variance on whether an order for alimony or maintenance made under chapter XLII of the Civil Procedure Code can be enforced in accordance with the provisions of the Civil Procedure Code. The issue is whether such an order can be enforced by the Magistrate's Court in accordance with the provisions of the Act.

The Maintenance Ordinance was repealed by section 19 of the Act. Where in any written law or document reference is made to any written law which is subsequently repealed, such reference shall be deemed to be made to the written law by which the repeal is effected or to the corresponding portion thereof [Section 16(1) of the Interpretation Ordinance]. This section applies to written laws and documents made before as well as after the commencement of the Interpretation Ordinance [Section 16(2) of the Interpretation Ordinance].

Therefore, section 624A of the Civil Procedure Code can be read to include a reference to the Act. Yet the question is whether the Act vests the Magistrate's Court with jurisdiction to enforce an order for alimony made by the District Court.

Part I of the Act deals with who can make an application for maintenance and the grounds on which it can be allowed. Part II deals with the enforcement of orders for maintenance. Section 5(1) refers to enforcement of orders but is limited to any person against whom an order is made under section 2 or the proviso to section 11 (1) of the Act. It does not include the enforcement of an order for alimony or maintenance made under chapter XLII of the Civil Procedure Code.

Accordingly, I hold that the Magistrate's Court does not have jurisdiction to enforce an order for alimony or maintenance made under chapter XLII of the Civil Procedure Code.

For the foregoing reasons, I set aside the order of the learned Provincial High Court Judge of the Western Province holden in Kaluthara dated 26.07.2012. The parties shall bear their costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal