

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
RAMANATHAPURAM.**

**PRESENT: THIRU.A.K. MEHBUB ALI KHAN, B.L.M.,L.L.M.,
PG.D.PM/IR.Dip.in.J.J & J.Psy.,P.G.D.D.F.,
Principal District Judge, Ramanathapuram.**

Thursday, the 09th day of April 2026

**I.A.No. 05/2025
in
I.D.O.P.No.63/2022**

1. Sahaya Stephy

2. Macario

3. Alice Gaprila

(1,2 Minor petitioners through their

mother and guardian, Sahayya Stephy)

... Petitioner/Respondent

/vs/

Arockia Antro Benister

... Respondent/petitioner

This petition came on 02.04.2026 before this Court for final hearing in the presence of Thiru.K. Muthuduraisamy, Advocate for the Petitioner/Respondent and of Thiru.M.Kesavan, Advocate for the Respondent/Petitioner and on heard their arguments and on perusal of records, this Court delivers the following:

ORDER

The petition filed by the wife/respondent under Sec.151 of CPC.

2. The case of the petitioners/Respondent in brief:

The petitioner is the wife of the respondent in this petition. The respondent/husband has filed the main I.D.O.P seeking divorce against the petitioner. Their marriage was solemnized on 24.04.2015 and they have two children named Macario and Alice Gaprila. Due to some misunderstanding both are living separately and her husband has filed the main petition seeking divorce. During the pendency of the petition, the wife/petitioner filed an application u/s.36 of the Indian Divorce Act seeking interim alimony for herself and her minor children in I.A.No.1/2023. The said petition was partly allowed directing the respondent/husband to pay Rs.10,000/- each to the minor children and dismissed the petition as against the wife on 17.10.2024. However, the respondent has not paid any amount for the past 2 years and as on the date of filing of this petition there is an arrear of Rs.42,000/- payable by the respondent. The petitioner is finding it very difficult for maintain her two children and meet their food, dresses, medical and educational expenses. She is depending upon the parents and is living a very difficult life. While so, the respondent has not obeyed the order of the court and has not paid any alimony to the children as directed by the court. The respondent is taking steps to marry another lady and is purposely avoiding payment. Hence, it is not proper to proceed with the main petition in the absence of compliance of the interim order. Therefore,

she prays to dismiss the main petition filed by the respondent/husband seeking divorce, for the non payment of interim alimony for the children and non compliance of the court order.

3. The case of the Respondent in brief:

The relationship between the parties and the direction of the court in I.A.No.1/2023 directing the respondent to pay interim maintenance of Rs.10,000/- each to the minor children on 17.10.2024 are admitted by the respondent. However, he being a fisherman could not go for fishing due to his ill health and he is unable to earn sufficient money to lead a decent life. Due to his ill health, he has lost his avocation and suffering without income for the past two years. Only because of this, he is unable to pay the interim maintenance as directed by the court. He is not avoiding the payment willfully or wantonly. The petitioner is earning Rs.30,000/- per month as a Teacher and is being supported by her parents and is living a luxurious life. The petition to dismiss the main OP for non payment of interim alimony is not maintainable and since all allegations are false the petition must be dismissed.

4. Points for consideration in this petition is,

“Whether the petition be allowed”?

5. No oral or documentary evidence was let in by either side.

Answer to Point:

6. The learned counsel for the petitioner contended that inspite of the order passed by the court to pay interim maintenance to the minor children, the respondent has purposely avoided payment and has made the petitioner to suffer a lot. Since, the main OP was filed by this respondent he could not be permitted to continue with the said proceedings and the petition must be dismissed for non compliance of the order passed by this court. Per contra, the learned counsel for the respondent contended that the petition is not maintainable and in the absence of any specific provision, the court cannot dismiss the main petition by invoking sec.151 of CPC. He further contended that only due to the circumstances beyond his control the respondent is unable to pay the interim alimony as ordered by the court and he has not avoided the payment wantonly. Therefore he prayed to dismiss the petition.

The learned counsel for the petitioner relied upon the decision of the Hon'ble Madurai Bench of Madras High Court in ***“Krishna Kumar Vs Suganya Dorairaj in C.R.P.(PD) No.4340 of 2015 dated 22.03.2017”***. In the said decision, the Hon'ble Madurai Bench of Madras High Court has held that in the case of failure to pay the monthly maintenance, the defence

available to the husband in the original petition can be struck off. That was a case wherein the wife had filed an application seeking divorce and therefore the defence taken by the husband who was the respondent in the main OP was ordered to be struck down. However in this petition, the husband has filed the main OP seeking divorce. In these circumstances, this court is conscious about the decision of the Hon'ble Mysore High Court in **“Ramachandra Rao Vs Kowsalya AIR 1969 Mysore 76”**, wherein the Hon'ble High Court had held that “if there was disobedience, the court has inherent power to stop further proceedings which were commenced by the husband”. Similarly in **“Rajnish Vs Neha (2020) 2 SCC online SC 903**, the Hon'ble Supreme Court has held that once the liability of the husband has attained finality, the trial court can retain itself the powers to struck off the defence. It is further held that u/s/151 CPC, the court has power to struck off the defence of the husband in case of default of payment of maintenance by husband.

Following the said decision, the Hon'ble Madras High Court in **“Ajithkumar Vs Shailaja in C.R.P.(PD) 5053/2024 dated 16.12.2024** has categorically held that “ the case is filed by husband and therefore, the court has to stop further proceeding. In yet another decision, **a “Maximus Fernandez Vs Olga Fernandez 2018 SCC online Kerala, 3479”**, the

Hon'ble Kerala High Court has also held that when the party flouts the court order directing payment of interim alimony thereby putting the other party at a disadvantage, the court is not helpless and it can exercise its power u/s.151 of CPC to do real and substantial justice”.

Thus in view of all these decisions, it is settled proposition that once the husband fails to obey the court order which has become final to pay interim alimony, the court can exercise its power u/s.151 of CPC and shall either struck off the defence of the husband if he is the respondent or shall stop further proceedings which were commenced by the husband.

Keeping this proposition in mind, it is found in this case that the court had directed the husband to pay interim alimony of Rs.10,000/- each to the minor children in I.A.No.1/2023 on 17.10.2024. The said order has not been set aside, modified or nullified by the appellate or the revisional courts and the husband has not obtained any stay order staying the operation of the said direction made by this court in I.A.No.1/23. In the absence of the any evidence to show that the husband has preferred an appeal or revision against the said order or that the stay has been granted, the said order has become final and the liability of the husband has also become final. The reason given by the husband for non compliance of the order is not acceptable and it clearly shows that he has blantly and

deliberately flouted the order of this court. Therefore, it is clearly proved by the petitioner/wife that the husband has avoided payment and there is an arrear of Rs.42,000/- as on the date of the petition.

Therefore, since the husband who has filed the divorce petition has not obeyed the order of this court directing to pay interim alimony to the minor children, and in view of the decisions referred above, he has no right to continue with the petition filed by him. Hence, it is held that the interest of justice warrants that the petition be dismissed for non compliance of the order directing to pay interim alimony. However, it is further held that the said petition shall be restored after the petitioner pays or deposits the entire arrears of interim alimony as directed by this court, payable as on date of filing the petition to restore the main OP. In other words, the husband shall restore the main OP No.63/2022 by filing an application to restore the same with the proof of the payment of the entire arrears of the interim alimony as on date of such petition to restore the main OP. This point is decided accordingly.

In the result, the petition is allowed and the main OP 63/2022 filed by the respondent/husband is ordered to be dismissed for non compliance of the order passed by this court in I.A.1/2023 dated 17.10.2024. The respondent/husband is at liberty to restore the main OP 63/2022 by filing an

application with proof of the payment of the entire arrears as on date of the such application.

Dictated to Steno-typist, transcribed and typed by her in the computer, corrected and pronounced by me in Open Court this **the 09th day of April 2026.**

Principal District Judge,
Ramanathapuram.

I. List of witnesses and Documents on the side of the petitioner: Nil

I. List of witnesses and Documents on the side of the Respondent: Nil

Principal District Judge,
Ramanathapuram.

Principal District Court,
Ramanathapuram.

I.A.No. 05/2025 in

O.P.No.63/2022

Fair Order

Dated: 09.04.2026