

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

RPFC.No. 10 of 2007 (E)

AGAINST THE ORDER IN MC 277/2006 of FAMILY COURT, PALAKKAD
DATED 10-10-2006

REVISION PETITIONER/COUNTER PETITIONER::

RAJAGOPALAN, S/O. RAMAN KUTTY,
KARIMBATHU VEEDU, KARUKAMANI, PANIYOOR P.O.,
ATHIKKODE, CHITTUR, PALAKKAD.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S)/PETITIONERS::

1. GIRIJA, AGED 36 YEARS,
D/O. PARAMESWARAN, PUZHAKKAL VEEDU, KANNADI,
PALAKKAD.

2. RAHUL, AGED 7 YEARS,
S/O. GIRIJA, RESIDING AT PUZHAKKAL VEEDU, KANNADI,
PALAKKAD.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 16-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.10 of 2007

Dated this the 16th day of September, 2015.

O R D E R

The petitioner herein is the respondent in M.C.No.277/06 on the files of the Family Court, Palakkad, filed by the respondents herein who are the wife and the son of the petitioner, claiming maintenance allowance under Section 125 of the Cr.P.C. According to the 1st respondent, she is the legally wedded wife of the petitioner and their marriage was solemnised in the year 1997. The 2nd respondent is the son born out of the said wedlock. They cohabited together from 1997 to 2001 only. She was constrained to leave the company of the petitioner when his ill-treatment and cruelty became intolerable. He used to harass her demanding more money and gold ornaments. At last, she was compelled to return to her parental house and thereafter the respondents are depending upon the parents of the 1st respondent. The 1st

respondent has no job or any source of income and thereby she is unable to maintain herself; whereas, the petitioner is conducting a welding workshop and he is earning Rs.5,000/- per month. The 1st respondent claimed an amount of Rs.1,500/- and the 2nd respondent claimed an amount of Rs.1,000/- per month.

2. The petitioner admitted the relationship claimed by the respondents. But he resisted the claim for maintenance on the ground that the 1st respondent was residing separately without sufficient reasons. According to him, the 1st respondent is able enough to maintain herself as she is earning Rs.2,000/- per month from her tailoring works. He denied the allegation that he is earning Rs.5,000/- per month from his job. According to him, he is only a worker in the said workshop and getting only Rs.90/- per day. On the above pleadings, both the parties adduced evidence which consist of the oral evidence of P.Ws.1 and 2 and CPW.1. Exts.D1 to D2(b) were marked on the side of the 1st respondent. After evaluating the evidence on record, the court below directed the petitioner to pay

maintenance allowance @ Rs.900/- per month to the 1st respondent and Rs.700/- per month to the 2nd respondent. The legality of the entitlement of the maintenance allowance and the correctness of the quantum determined by the learned Family Court are under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner.

4. The learned counsel advanced arguments assailing the findings whereby the petitioner was directed to pay maintenance allowance to the 1st respondent. The sum and substance of the arguments is that the 1st respondent is residing separately without sufficient reasons. Therefore, she is not entitled to get maintenance allowance.

5. The marital status of the 1st respondent and the paternity of the 2nd respondent are admitted. It is also contended that though the marriage was solemnised in the year 1997, they cohabited together upto 2001 and thereafter the respondents are residing separately. The M.C. was filed in the year 2006. No evidence was

forthcoming to show that the petitioner has made any earnest effort to resume the company of the respondents. So also, there is no evidence to show that he has paid any amount towards maintenance of the respondents from 2001 to 2006. The 1st respondent has given evidence to satisfy the court that the petitioner had ill-treated her with cruelty demanding more dowry and when the ill treatment became intolerable, she was constrained to leave the company of the petitioner. I do not find any reason to interfere with the findings of the learned Family Court judge who had an opportunity to witness the demeanour of the witness. I do not find any illegality or impropriety in the finding that the 1st respondent is entitled to get maintenance allowance from the petitioner.

6. Coming to the correctness of the quantum of maintenance allowance, though the petitioner had contended that the 1st respondent is earning Rs.2,000/- per month from her tailoring works, no evidence was forthcoming to show that she is a tailor by profession. In the absence of such evidence, it can be safely

concluded that the 1st respondent is unable to maintain herself and the 2nd respondent. The petitioner himself admitted that he is doing welding works. But, according to him, he is only a worker in the workshop. However, he admitted that he is a skilled worker doing welding works. He has no case that he is unhealthy or physically disabled, to do any work. "Means" provided under Section 125 of the Cr.P.C. signifies not only movable or immovable property in the shape of salary, agricultural income or rent, but also the earning capacity of a physically able bodied man. Similarly, "maintenance" includes provision for food, shelter, residence, medical attendance, educational expenses of the children, etc. A husband is liable to pay maintenance allowance to his wife and children in accordance with their living status and standard of life and the day-to-day requirements. In the above analysis, I find that the monthly maintenance allowance granted by the court below at the rate of Rs.900/- to the 1st respondent and Rs.700/- to the 2nd respondent is not excessive and there is no reason to

interfere with the said finding also. Consequently, this R.P(FC) is dismissed.

7. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two months and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the 1st respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

Sd/-
K. HARILAL, JUDGE

okb.