

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

RPFC.No.126 of 2009 ()

**AGAINST THE ORDER IN MC 150/2006 of FAMILY COURT,ERNAKULAM
DATED 18-10-2008**

REVISION PETITIONER/PETITIONER :

**JOMOL, AGED 33 YEARS, D/o P.G.THOMAS,
PURAMUKALIL HOUSE, UNIVERSITY COLONY, COCHIN-22.**

BY ADV. SRI.VINCENT JOSEPH (CHUNDATT)

RESPONDENT /RESPONDENT :

**M.C.JOSEPH, MARATHONDARA (H)
KAITHARAM P.O., N. PARAVOOR.**

BY ADV. SMT.K.GIRIJA

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 23-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

R.P.(FC).No.126 of 2009

Dated this the 23rd day of February, 2015

ORDER

The revision petitioner is the 1st petitioner in M.C.No.150 of 2006 on the files of the Family Court, Ernakulam. This revision petition is filed challenging the order, by which, the Family Court declined the claim of the petitioner for maintenance allowance under Section 125 of the Code of Criminal Procedure. The status of the petitioner as legally wedded wife and the paternity of the children are admitted. The marriage was solemnized in the year 1999 and they lived together as husband and wife upto 2005 and while cohabiting together, two children are born out in the said wedlock.

2. According to the petitioner, from the very beginning of the marriage, the husband and his relatives ill treated her with cruelty, both mentally and physically, and at last, she was constrained to leave the company of the respondent. Though several attempts were made to reconcile the marital discordance between the spouses,

the said attempts were also unsuccessfully ended.

3. Per contra, the respondent contended that, there is no sufficient reason to live separately and thereby, she is not entitled to get maintenance allowance from the respondent. According to him, she refused to live with him and she left the house with the children on her own accord; but he was always ready and willing to receive her back to resume cohabitation. So also, she raised false and untrue allegations against him and his sister.

4. Heard the learned counsel appearing for both parties in extenso. The learned counsel for the petitioner advanced arguments assailing the findings whereby the court below rejected the claim for maintenance. Per contra, the learned counsel for the respondent advanced argument to justify the findings by which the court below rejected the claim for maintenance. In view of the rival contentions raised at the Bar, the question to be considered is whether the court below can be justified in declining the petitioner's claim for maintenance?

5. The claim for maintenance allowance under Sec.125(1)(a) of the Code of Criminal Procedure is a

statutory right which cannot be declined unless any of the grounds enumerated under sub-section (4) of Sec.125 Cr.P.C. has been proved. If the wife refuses to live with the husband without sufficient reason, no doubt, she is not entitled to get maintenance allowance from the husband. It is the specific case of the first petitioner that, she was subjected to physical and mental cruelty and ultimately she left the matrimonial home with the children, apprehending danger to her life. On the other hand, the respondent specifically contended that, the first petitioner along with the children left his company without sufficient reasons; but on her own accord. In support of the rival contentions, both parties adduced oral evidence also.

6. In view of the pleadings, the preliminary issue which ought to have been considered was whether the petitioner had refused to live with the respondent without sufficient reasons? But the court below omitted to frame the above said issue. Similarly, the evidence adduced by both parties is in abundance to determine the above issue. But the court below without evaluating the evidence on record, jumped into a finding that, the petitioner is not

entitled to get maintenance allowance from the respondent as she is living separately without sufficient reasons. In short, the findings have no legs to stand.

7. Reasoning is the soul of a judicial order and an order without reasoning is not a judicial order in the eye of law. The scope and extent of revisional jurisdiction are confined to legality, propriety and correctness of the findings of the court below. Therefore, this court is not inclined to appreciate evidence at first. It is for the trial court to appreciate evidence at first and arrive at a proper finding in accordance with the evidence on record.

8. Consequently, the impugned order is set aside in part to the extent of the findings whereby the revision petitioner's claim for maintenance allowance from the respondent has been declined and the matter is remitted back to the trial court. The learned Family Court Judge shall consider the evidence available on record and pass orders afresh, within a period of two months from the date of receipt of a copy of this order, after hearing the parties.

This Revision Petition is disposed of accordingly.

**K.HARILAL
JUDGE**

/TRUE COPY/

PA TO JUDGE

VS