

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE K. HARILAL

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

OP (FC).No. 90 of 2015 (R)

AGAINST THE ORDER IN M.C.NO.142/2014 OF THE FAMILY COURT,
KOTTARAKKARA DATED 29.12.2014.

PETITIONER/RESPONDENT:

VINODKUMAR, AGED 43 YEARS
S/O. SREEDHARAN, SREEVILASAM VEEDU, KUMBAZHA P.O.
MYLADUMPARA, PATHANAMTHITTA DISTRICT
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
SANIL KUMAR P., AGED 41, S/O.K.N. PURUSHOTHAMAN
RESIDING AT ANEESH BHAVANAM, PANDANADU NORTH P.O.
PANDANADU VILLAGE, CHENGANNOOR TALUK,
ALAPPUZHA DISTRICT.

BY ADVS. SRI.HARISH R. MENON
SRI.M.S.KIRAN

RESPONDENTS/PETITIONERS:

1. SINDHUMOLE, AGED 37,
D/O. SASIDHARAN, SINDHU BHAVAN, CHEPRA P.O.
ODANAVATTOM, KOTTARAKKARA.
2. ABHIJITH, AGED 13,
MINOR, SINDHU BHAVAN, CHEPRA P.O.
ODANAVATTOM, KOTTARAKKARA.
3. ABHIRAMI, AGED 13,
MINOR, SINDHU BHAVAN, CHEPRA P.O.
ODANAVATTOM, KOTTARAKKARA
(MINOR RESPONDENTS 2 AND 3 ARE REPRESENTED
BY MOTHER THE 1ST RESPONDENT)

BY ADV. SRI.ALEXANDER GEORGE

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 20-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT-P1 TRUE COPY OF M.C.NO.142/2014 FILED BY THE IST RESPONDENT U/S 125 (1) OF THE CODE OF CRIMINAL PROCEDURE AND SECTION 7 OF THE FAMILY COURTS ACT FILED BEFORE THE FAMILY COURT, KOTTARAKKARA.

EXHIBIT-P2 TRUE COPY OF THE PETITION FILED BY THE IST RESPONDENT UNDER ORDER 38 OF RULE 5 OF THE CIVIL PROCEDURE CODE BEFORE THE FAMILY COURT, KOTTARAKKARA.

EXHIBIT-P3 TRUE COPY OF THE ORDER DATED 29/12/2014 IN M.C. 142/2014 PASSED BY THE FAMILY COURT, KOTTARAKKARA.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

K.T.SANKARAN & K. HARILAL, JJ.

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Dated this the 20th day of March, 2015

JUDGMENT

K.T.Sankaran, J.

The respondents filed M.C.No.142 of 2014 on the file of the Family Court, Kottarakkara against the petitioner claiming maintenance under Section 125 of the Code of Criminal Procedure. It would appear that the parties were referred for counselling. Thereafter, on 29.12.2014, the court below passed the following order:

“Not settled. Petitioner present. Counter petitioner represented. Counter petitioner is directed to pay interim maintenance at the rate of ₹2,500/- each per month to the petitioners. For objection 16.03.2015.”

2. The contention of the petitioner/husband is that the order passed by the court below is contrary to the well settled principles in **Saju Sasidharan v. Dhanya and another (2012 (3) KHC 867 (DB))** and in **Davis v. Thomas and another (2007(4) KHC 363)** that interim maintenance cannot be awarded without there being an application for that purpose.

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3. The learned counsel for the respondents submitted that along with the maintenance case an application for interim maintenance at the rate of ₹8,000/- per month was filed. But that application was not numbered and it was not taken up for hearing. The learned counsel for the husband submitted that he did not get a copy of the application and he was not afforded an opportunity to file a counter statement therein.

4. In view of the decisions referred to above, the order passed by the court below is set aside. The respondents shall serve a copy of the application for interim maintenance on the petitioner/husband who shall file counter affidavit, if any, within two weeks thereafter. The court below shall consider the question of interim maintenance and shall pass a final order in the application for interim maintenance expeditiously, after affording an opportunity of being heard to both parties.

The Original Petition (Family Court) is disposed of as above.

(K.T.SANKARAN)
Judge

(K. HARILAL)
Judge

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