

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON  
&  
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

OP (FC).No. 215 of 2015 (R)  
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AGAINST THE ORDER IN MC.NO.106/2014 OF FAMILY COURT, ERNAKULAM

PETITIONER:  
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JOY M.X., S/O.XAVIER,  
MANIYAPOZHY HOUSE, C/O.ALOSHIOUS, THEVARA,  
MALIYEKKAL ROAD, ERNAKULAM.

BY ADVS.SMT.P.F.ROSY  
SRI.V.M.SYAM KUMAR  
SMT.KRIPA ELIZABETH MATHEWS

RESPONDENTS:  
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1. SHEEBA ELIZABETH V.R., AGED 40 YEARS,  
D/O.LATE ROBERT, VALIAPARAMBIL HOUSE, CHELLANAM P.O  
ERNAKULAM.

2. AMAL XAVIER (MINOR),  
AGED 13 YEARS, REPRESENTED BY HIS MOTHER, SHEEBA.

R1-R2 BY ADV. SMT.K.TRESA RANI GEORGE  
R1-R2 BY ADV. SMT.M.R.ELSIE

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON  
18-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 215 of 2015 (R)

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APPENDIX

PETITIONER'S EXHIBITS:  
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EXT.P1 - TRUE COPY OF THE AGREEMENT DTD.8.12.2010 EXECUTED BETWEEN THE  
PETITIONER AND THE 1ST RESPONDENT.

EXT.P2 - TRUE COPY OF THE OBJECTION DTD.1.1.2015 FILED BY THE  
PETITIONER IN M.P. NO.1122 OF 2014 IN M.C.NO.106 OF 2014 BEFORE THE  
FAMILY COURT, ERNAKULAM.

EXT.P3 - TRUE COPY OF THE ORDER DTD.9.3.2015 IN MP NO.1122 OF 2014 IN  
M.C.NO.106 OF 2014 PASSED BY THE FAMILY COURT, ERNAKULAM.

RESPONDENTS' EXHIBITS:NIL  
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/TRUE COPY/

P.S TO JUDGE

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**P.R. RAMACHANDRA MENON &  
K. RAMAKRISHNAN, JJ.**

.....  
O.P.(FC)No.215 of 2015

.....  
Dated this the 18<sup>th</sup> day of June, 2015.

**JUDGMENT**

**Ramakrishnan, J:**

Counter petitioner in the lower court is the petitioner herein who challenged Ext.P3 order seeking interference by this Court by invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. The respondents herein filed M.C.No.106/2014 seeking maintenance for the first respondent and the child, who are the wife and child of the petitioner herein. They also filed M.P.No.1122/2014 seeking interim maintenance at the rate of ₹5,000/- per month and litigation expenses of ₹10,000/-. Since no objection was filed, Family Court fixed interim maintenance at the rate of ₹5,000/- per month, which is being challenged by the petitioner by filing this petition.

3. Heard both sides.

4. Counsel for the petitioner submitted that the petitioner is without any job now and he is unable to raise the amount

and pay the same by way of interim maintenance. Even earlier there was an agreement between the parties, whereby they have agreed to separate by filing a joint petition for divorce by mutual consent and as a condition for the same, certain property of the petitioner to be transferred in favour of the wife and child. But the same could not be materialized. In violation of the same, the present petition has been filed, is the contention raised.

5. Counsel for the respondents submitted that the first respondent is without any employment and she is finding it very difficult to meet both ends by maintaining herself and the child.

6. The marriage and paternity of the child are not in dispute. The order shows that on the date on which the application was taken up for consideration, the respondent was absent and no objection was filed though the counsel for the petitioner herein submitted that objection has been signed and copy has been given. Considering the fact that the petitioner herein is said to be working as an expert tailor/cutter as submitted by the petitioners in the lower court, it cannot be said that he is not having any earning capacity to pay the

maintenance. Since marriage has been dissolved by decree of divorce on the basis of the application filed by the wife, no means plea raised by the petitioner herein is not a ground to deny maintenance to the divorced wife. Till she is remarried or it is established that she is having means to maintain herself, he is also liable to pay maintenance to her and the minor child as well. So under the circumstances and considering the submission made, we feel that interim maintenance can be refixed as ₹3,000/- per month.

With the above modification of the interim maintenance ordered by the court below, this petition is disposed of.

Sd/-  
**P.R. RAMACHANDRA MENON,**  
**JUDGE.**

Sd/-  
**K. RAMAKRISHNAN,**  
**JUDGE.**

/true copy/

P.S to Judge

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