

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

RPFC.No. 5 of 2012 ()

AGAINST THE ORDER IN MC 7/2011 of FAMILY COURT, THALASSERY
DATED 27-10-2011

REVISION PETITIONER(S)/COUNTER PETITIONER:

SREEDHARAN. P,
S/O. SANKARAN, AGED 55 YEARS, CHARITYAPURAKAL HOUSE,
CHORODE, KURIYADI AMSOM, VADAKARA TALUK,
KOZHIKODE DISTRICT - 673 103.

BY ADVS.SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENT (S) /RESPONDENTS:

1. AMRUTHA.C.P., (MINOR),
D/O. SREEDHARAN, SREEPATHAM, PAREEKADAVU,
P.O. DHARMADAM, THALASSERY, KANNUR DISTRICT-670101.

2. AMAL.C.P., (MINOR),
S/O. SREEDHARAN, SREEPATHAM, PAREEKADAVU,
P.O. DHARMADAM, THALASSERY, KANNUR DISTRICT-670101.

(SINCE BOTH OF THE RESPONDENTS ARE MINORS THEY ARE REPRESENTED
BY THEIR MOTHER AND GUARDIAN A.V.SREEJA W/O.SREEDHARAN,
SREEPATHAM, PAREEKADAVU, P.O.DHARMADAM, THALASSERY, KANNUR
DISTRICT, PIN-670101.)

R1-R2 BY ADV. SRI.M.SASINDRAN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.5 of 2012

Dated this the 13th day of October, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.7/11 on the files of the Family Court, Thalassery, filed by the respondents herein who are the children of the petitioner. They filed the above M.C. claiming monthly maintenance allowance at the rate of Rs.4,000/- each from him on the ground that he neglected them and refused to pay maintenance allowance from 2001 onwards. But the court below passed the impugned order directing the petitioner to pay maintenance allowance @ Rs.2,000/- each per month. The correctness of the quantum of maintenance allowance determined by the court below is under challenge in this revision petition.

2. The paternity of the respondents is not disputed. So, it follows that as a father the petitioner is liable to pay maintenance allowance to

the respondents under Section 125 of the Cr.P.C. It is the case of the respondents that he failed to pay maintenance allowance to them from 2001 onwards. The petitioner did not adduce any evidence to show payment of maintenance allowance except Exts.B1 to B4, which cover the period from 2004 to 2007. It follows that no evidence has been adduced to show payment of maintenance allowance to the respondents before 2004 and after 2007. The M.C. was filed in the year 2011 and at that time the 1st respondent was studying in 8th standard and the 2nd respondent was studying in 7th standard at Amritha Vidyalaya at Thalassery. In the above view, it can be safely concluded that the petitioner failed to pay maintenance allowance to the respondent who are his children, in accordance with their needs, after 2007.

3. Though the mother of the respondents was working as a Sweeper, it stands proved that she is getting Rs.11,000/- only per month as salary and out of that amount the Family Court, Kozhikode has passed an order attaching Rs.2,500/- per month from her salary

in execution of the decree for restitution of conjugal rights passed against her.

4. Going by the impugned order, it is seen that the petitioner has vehemently contended that he is not liable to pay maintenance allowance to his children so long as their mother is not willing to reside with him in compliance with the decree for restitution of conjugal rights in his favour. I am of the opinion that that non-compliance of the direction in the decree for restitution of conjugal rights by the mother has no bearing at all, while considering the claim of the minor children for maintenance allowance from their father. As rightly held by the court below, the income of the mother of the respondents as a Sweeper is not sufficient to meet the needs of the respondents, who are children studying in 8th and 7th standards in a private school. Ext.All shows that a substantial amount is required to meet the educational expenses of the respondents.

5. Then the question to be considered is, whether the petitioner has sufficient means to pay maintenance

allowance to the respondents in accordance with their requirement.

6. Admittedly, the petitioner is an Electrician and Plumber. But he contended that though he was an Electrician, he is unable to do work for the last two years due to his physical disability and bad health conditions. But, no evidence has been adduced to prove his physical disability or incapacity to do work. So, in the absence of evidence, it can be reasonably presumed that he is an able bodied man capable of doing electrical and plumbing works. He is aged 55 years only. As rightly held by the court below, it cannot be considered as an age for not doing any job. The petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. "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 father is liable to pay maintenance allowance to his children in accordance with their living status, standard of life and the day-to-day requirements. In the above view of the matter, the direction of the Family Court to pay monthly maintenance allowance to the respondents at the rate of Rs.2,000/- each is just and proper warranting no interference under revisional jurisdiction. This revision petition is devoid of merits and dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.