

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

RPFC.No. 77 of 2010

AGAINST THE ORDER IN M.C.NO.344/08 DATED 23/7/2009 ON
THE FILES OF THE FAMILY COURT, KOZHIKODE.

REVISION PETITIONER/RESPONDENT:

HARISH CHANDRAN M.R. ,
AGED 41 YEARS, S/O.M.R.RAMACHANDRAN NAIR,
POENIX ACADEMY, LOGOS CENTRE, NEAR COLLECTORATE,
KOTTAYAM.

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENT(S) /PETITIONER:

SISIRA NAIR, AGED 12 YEARS,
MINOR, REPRESENTED BY HER MOTHER USHA NAIR,
FLAT NO.2722,
BLOCK NO.9, BILATHIKULAM HOUSING COLONY,
KOZHIKODE.

BY ADV. SRI.V.G.ARUN
ADV. SRI.T.R.HARIKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN
FINALLY HEARD ON 19-03-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No. 77 of 2010

Dated this the 19th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.344 of 2008 on the files of the Family Court, Kozhikode. The above M.C. was filed by his daughter, aged 12 years, under Section 125 of the Code of Criminal Procedure, claiming maintenance allowance from him. According to the respondent, she is the daughter of the petitioner born in the divorced wife. The marriage between the petitioner and the mother of the respondent was solemnized on 6/4/1995 and they cohabited up to 2000 only. Later, the petitioner had obtained a decree of divorce on 10/5/2006 in O.P.No.604 of 2006. It is the case of the respondent that the petitioner has been

neglecting her and refused to pay maintenance allowance from 2000 onwards. At the time of filing the above M.C., she was studying in 7th standard at Devagiri Public School, Kozhikode. Her entire expenses were borne by the mother of the respondent and the petitioner had never bothered to look after the respondent. The respondent has not even seen her father for the last more than 7 years. There is no immovable property in the name of the respondent. She is depending on her mother for her livelihood; whereas the petitioner has sufficient financial capacity to pay maintenance allowance to the respondent. He was a Government employee and later, he resigned the job for conducting business and he has been conducting an establishment named 'Phoenix Academy, Logos Centre, near Collectorate, Kottayam and he is earning a monthly income of ₹30,000/-. The respondent claimed ₹7,500/- per month for her maintenance.

2. The petitioner filed a counter statement admitting the paternity of the respondent. It is also admitted that from the year 2000 onwards the respondent had been residing with the mother. He has no case that he has been paying maintenance allowance to the respondent. According to the petitioner, he is not earning monthly income as contended by the respondent. The amount claimed by the respondent, as monthly income, is highly excessive. But, at the same time, he offered that if the mother of the respondent is not willing to maintain the respondent, he is ready to protect and maintain the minor child. According to the petitioner, the intention of the mother of the respondent is to extract money from him without even permitting the petitioner to see the child. The mother of the respondent was examined as P.W.1 and Ext.A1 was produced and marked in evidence. The petitioner herein was examined as R.W.1. No documentary

evidence had been produced to substantiate his contention. After considering the rival contentions, the court below directed the petitioner to pay maintenance allowance at the rate of ₹2,500/- per mensem to the respondent. The correctness of the determination of the quantum of maintenance allowance is under challenge in this revision petition.

3. Going by the Memorandum of Revision Petition, it could be seen that the petitioner has challenged the determination of the quantum of maintenance allowance on the ground that the quantum of maintenance allowance determined by the court below is disproportionate with his income and the actual living expenses of the petitioner.

4. Per contra, the learned counsel for the petitioner contended that the quantum of maintenance allowance determined by the court below is just and proper. The short question that arises for consideration is, whether the quantum of

maintenance allowance determined by the court below is justifiable? The paternity of the child is not disputed. It is also admitted that the petitioner has obtained the decree of divorce in the year 2006 in O.P.No.604 of 2006. It is the specific case of the respondent that since 2000, they were living separately. The mother of the respondent is also an employee. But, I am of the opinion that the employment of the mother does not exonerate the petitioner from his statutory liability to pay maintenance allowance to his daughter. It is also admitted that in May, 2006, the petitioner has married another lady by name 'Valsamma Mathew'. No evidence has been produced to show that he has paid any amount towards maintenance allowance to the respondent after 2000. In the absence of any evidence, it can reasonably be concluded that the petitioner has neglected the respondent and refused to pay maintenance allowance to her from 2000

onwards.

5. What remains to be considered is, whether the quantum of maintenance allowance determined by the court below is proportionate with the income of the petitioner? To prove the income of the petitioner, the mother of the respondent was examined as P.W.1 and produced Ext.A1. As rightly noted by the court below from Ext.A1, it can be seen that the petitioner is conducting an institution by name 'Phoenix Career Solution Pvt. Ltd.,' and they are arranging the persons to take abroad and hospitality training service. They are also conducting Australian Cookery Trade Test at their Kottayam based Hospitality Institute. In addition to that, they are also conducting training solution, English language courses, travelling service for students from all over the world. Phoenix Anglo Academy is the English language training division of the said company. Thus, they are doing various services and the petitioner is the Managing Director of

the said Institution. It is pertinent to note that he was a Government servant and he himself resigned the job for conducting the above business. From this, it could reasonably be presumed that he has sufficient earnings from the said business to look after his daughter. He has no case that he is unhealthy or physically challenged or incapacitated to conduct the said business or the said business is not running. At the time of filing the petition, the child was aged 12 years and she was a school going student. A considerable amount is required to meet her educational expenses, food, clothing and medical expenses etc. From Ext.A1, it could reasonably be presumed that the petitioner has sufficient means to pay the maintenance allowance in accordance with the needs of the respondent.

6. Having regard to the status of the petitioner and the needs of the respondent, I am of the opinion that the quantum of maintenance allowance

determined by the court below is just and proper warranting no interference under the revisional jurisdiction.

In the result, this revision petition is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge