

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

RPFC.No. 140 of 2010 ()

MC 449/2009 of FAMILY COURT, MALAPPURAM

REVISION PETITIONER/RESPONDENT:

MOHAMMED ALI, AGED 37 YEARS,
S/O.ABOOBACKER, MANGATTIL HOUSE, CHERUSSOLA.P.O,
KOTTAKKAL, MALAPPURAM DISTRICT.

BY ADV. SRI.P.SAMSUDIN

RESPONDENT(S)/PETITIONER:

FATHIMA, AGED 29 YEARS,
D/O.MOHAMMED KUTTY, KAMPRATH PULIKKODAN HOUSE,
OTHUKKUNGAL AMSOM, ATTIRI DESOM,
THIRURANGADI TALUK, KOTTAKKAL, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.140 of 2010

Dated this the 25th day of March, 2015.

O R D E R

1.The revision petitioner is the respondent in M.C. No.449/2009 on the files of the Family Court, Malappuram. The above M.C. was filed by the respondent herein, who is the wife of the revision petitioner claiming maintenance allowance from the revision petitioner under Section 125 of the Code of Criminal Procedure. According to the averments in the petition, their marriage was solemnised on 17/8/2005 and they cohabited together till 2007. Thereafter, the petitioner has been neglecting to maintain the respondent and refused to pay maintenance allowance. She was driven out from her matrimonial home on 23.3.2007. Thereafter the revision petitioner has not paid any amount towards maintenance or enquired about her affairs, though he had frequently come down on leave from Gulf. He is employed abroad and earning Rs.40,000/- per month whereas the respondent has no job or any source of income and she is unable to maintain herself. She claimed maintenance allowance @ Rs.4,000/- per month.

2. The revision petitioner appeared through a Power of Attorney and filed a counter admitting the marital status of the respondent. But he denied all other allegations against him in the petition. He specifically denied the allegation that his family members had driven out the respondent from the matrimonial home on 23/3/2007. It is also contended that the respondent had gone away from the matrimonial home without his knowledge or consent. According to the revision petitioner, the respondent is a tailor by profession and she is conducting a tailoring shop and earning an income of Rs.8,000/- per month. Even though he is living abroad, according to him, he was sitting idle without any job or income. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance @ Rs.4,000/- per month. The legality of the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance determined by the court below are under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent. The learned counsel for

the revision petitioner advanced arguments challenging the findings whereby the court below directed him to pay maintenance allowance @ Rs.4,000/- to the respondent. According to the learned counsel, the court below miserably failed to appreciate the evidence of R.Ws.1 to 3 in its correct perspective. It is also contended that the quantum of maintenance allowance determined by the court below is disproportionate with the income of the revision petitioner.

4. Per contra, the learned counsel for the respondent advanced arguments to justify the findings whereby the court below directed the revision petitioner to pay maintenance allowance @ Rs.4,000/- per month. It is also contended that the court below rightly appreciated the respondent's claim for maintenance allowance and correctly fixed the quantum of maintenance allowance in commensuration with the income of the revision petitioner.

5. In view of the rival pleas, the short question that arises for consideration is, whether the court below can be justified in directing the revision petitioner to pay maintenance allowance

at the rate referred above.

6. The marital status of the respondent is not disputed. It is the specific case of the respondent that she was driven out from her matrimonial home by the family members of the revision petitioner on 23/3/2007, when he was working abroad. Though he denied the said allegation, no evidence has been adduced to show that she had refused to stay with him without sufficient reasons. Since the right to maintenance is a statutory right conferred under Section 125 of the Cr.P.C., the burden is heavy on the husband to prove that the wife refused to live with him without sufficient reasons. Going by the impugned order, it could be seen that the revision petitioner has failed to discharge the burden of proof. Therefore, I do not find any reason to interfere with the entitlement of maintenance allowance in favour of the respondent by the court below.

7. What remains to be considered is the correctness of the quantum of maintenance allowance fixed by the court below. Admittedly, at the time of marriage and examination in evidence the revision petitioner was working abroad. But he

contended that though he is living abroad, he was sitting idle without any job or income. But no evidence was adduced to substantiate the said contention. It is unbelievable that a person can live idle in gulf country without any source of income. At the same time, he himself admitted that he was employed abroad for the last more than ten years. He has no case that he is unhealthy or physically disabled or incapacitated to do any work so as to earn livelihood for his family. Though the revision petitioner has contended that the respondent is a tailor by profession and conducting a tailoring shop having an income of Rs.8,000/- per month, no evidence has been adduced to substantiate the said contention. Therefore, it could be safely concluded that the respondent is unable to maintain herself. The revision petitioner being the husband of the respondent is liable to pay the maintenance allowance in accordance with the status of the respondent and her day-to-day living expenses.

8. Having regard to the fact that the revision petitioner is an NRI working abroad for the last more than ten years, it could be reasonably presumed that he has sufficient means to pay

maintenance allowance to his wife at the rate ordered by the court below. I do not find any reason to interfere with the determination of the quantum of maintenance allowance.

In the result, this R.P(FC) will stand dismissed.

Sd/—
(K.HARILAL, JUDGE)

okb.