

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

RPFC.No. 189 of 2010 ()

AGAINST THE ORDER IN MC NO.736/2009 of FAMILY COURT,
MALAPPURAM DATED 12-01-2010.

REVISION PETITIONER(S)/PETITIONER/RESPONDENT IN MC.:

PRABHAKARAN, S/O.CHANTHU, VILATHEDATH
PARAMBIL, PALACHIRAMADU, KLARI,
KULAMBIL PARA, P.O.EDARIKODE, ALARI AMSOM DESOM,
TIRUR TALUK.

BY ADV. SRI.A.KRISHNAN

RESPONDENT(S)/PETITIONER IN MC:

SUNITHA,D/O. VENU, MANNIL HOUSE,
NOTTAPPURAM P.O., KUNNAMANGALAM,
KUNNAMANGALAM AMSOM,
DESOM, TIRURANGADI TALUK, VENGARA POLICE STATION.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN
FINALLY HEARD ON 13-02-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.189 of 2010

Dated this the 13th day of February, 2015

ORDER

The petitioner is the respondent in M.C. No.736 of 2009 on the files of the Family Court, Malappuram, and the respondent is the petitioner therein. The above M.C. was filed under Sec.125 of the Code of Criminal Procedure claiming maintenance allowance from the petitioner alleging that she is residing separately and unable to maintain herself. She claimed maintenance allowance at the rate of ₹4,000/- per mensem. According to her, the petitioner is running an industrial unit at Palachiramad, wherein steel almirahs are manufactured and supplied. He is getting an income of ₹25,000/- per mensem. She was

constrained to live separately without forfeiting her rights to get maintenance allowance when her marital life along with the petitioner became intolerable due to mental and physical harassment and torture meted out to her by the petitioner .

2. The petitioner filed a counter affidavit admitting the marital status of the respondent; but contended that she was residing separately without sufficient reasons. Though, he had filed O.P.No.1008 of 2008 for restitution of conjugal rights, subsequently, it was compromised between the parties and they began to live together. Unfortunately, again the relationship became strained and marital life had been broken due to irreconcilable discordancy. He admitted that the criminal case alleging physical torture filed by the respondent is pending before the Magistrate's Court. The court below found that there are sufficient reasons to live separately without forfeiting her rights to claim maintenance allowance. I do not find any kind of perversity in the appreciation of

evidence from which the court below arrived at such a finding.

3. The next question to be considered is, whether there is any illegality or error in determination of the quantum of maintenance allowance? According to the respondent, she has no job or income and she is unable to maintain herself. On the other hand, the petitioner is running an industrial unit of manufacturing steel almirahs and earning an income of ₹25,000/- per mensem. But the petitioner contended that he is not the owner of the said manufacturing unit; but he is a painter employed in that industrial unit. It is also contended that he is a heart patient suffering from kidney stone etc., and undergoing treatment. According to the petitioner, the respondent is a tailor, who is capable enough to earn for her livelihood. To substantiate the contentions raised by the petitioner, he has produced Ext.D1 ration card which shows that he belongs to BPL category and his family income is only ₹50/-. But

the court below, after appreciating the oral evidence of the petitioner admitting the family status of him and his brothers, arrived at a finding that no reliance can be placed on Ext.D1 ration card.

4. Ext.D2 series are scan report with a few prescriptions and lab reports and the same were produced to show that he is suffering from heart disease and kidney stone. After appreciating the medical evidence, the court below found that the evidence adduced by the petitioner is not sufficient to arrive at a conclusion that he is physically unable to do work so as to eke out livelihood for his family. Though the petitioner contended that he is a painter only in the industrial unit, no evidence had been adduced to show his status as an employee. In the absence of such evidence, the contention of the respondent that he is the owner of the industrial unit cannot be brushed aside.

5. Income is a fact exclusively within the knowledge of an employee who receives the same and

it is for the petitioner to prove that he is getting salary only from the industrial unit. Though he contended that the respondent is a tailor and earning for her livelihood, no evidence had been adduced to substantiate the above contention also. I cannot find fault with the finding of the court below that, at any rate, the petitioner can easily earn ₹200/- per day. If that be so, the court below can be justified in fixing the maintenance allowance at the rate of ₹2,500/- per mensem and there is no illegality or impropriety in the determination of the quantum of maintenance allowance.

Consequently, this revision petition will stand dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge