

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

RPFC.No. 285 of 2012 ()

MC 23/2011 of FAMILY COURT, PALAKKAD
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REVISION PETITIONER/COUNTER PETITIONER:-:

**UNNIKRISHNAN,
S/O.NARAYANAN NAIR, KRISHNA BHAVAN, MELEPURATH,
RAILWAY COLONY, PALAKKAD.**

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENT(S)/PETITIONERS:-:

- 1. SEETHA,
D/O.KANNAN NAIR, LATHA NIVAS, KUNNUMPURAM,
P.O.KALPATHY, PALAKKAD - 678 003.**
- 2. NIVEDITHA (MINOR),
D/O.SEETHA, LATHA NIVAS, KUNNUMPURAM,
P.O.KALPATHY, PALAKKAD - 678 003.
(2ND RESPONDENT - MINOR IS REP. THROUGH GUARDIAN - MOTHER THE 1ST
RESPONDENT).**

**R1&2 BY ADV. SRI.K.MANOJ CHANDRAN
R1&2 BY ADV. SRI.P.RAJITHKUMAR**

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
30-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.285 of 2012

Dated this the 30th day of March, 2015.

O R D E R

1. The revision petitioner is the respondent in M.C. No.23/2011 on the files of the Family Court, Palakkad, which was filed by the respondents herein, who are the wife and child of the revision petitioner, under Section 125 of the Code of Criminal Procedure. According to the averments in the M.C., their marriage was solemnised on 16/1/2008 and the second respondent is the only child born in the said wedlock. They cohabited together till 14/4/2010. According to the first respondent, sometime after the marriage she was subjected to cruelty and harassment, both mental and physical, by the revision petitioner and other family members who were residing along with the revision petitioner. Though she expressed her desire to live separately so as to avoid the harassment and cruelty meted out to her by his family members, the revision petitioner was not amenable to lead such a life. At last, on 14/4/2010 the revision petitioner himself took the respondents to her house stating that he did not want them.

Thereafter, he had been neglecting to look after them and refused to pay maintenance allowance to them. According to her, the revision petitioner was working as a Pump Operator in Water Authority Pant at Malampuzha and he is getting Rs.16,000/- as salary whereas the first respondent has no job or income and she is depending upon her parents and relatives. She claimed an amount of Rs.5,000/- to herself and Rs.4,000/- to the second respondent towards maintenance allowance.

2. Per contra, the revision petitioner filed a statement admitting the marital status of the first respondent and the paternity of the second respondent. But he denied all the allegations of cruelty and mental harassment levelled against him and his family members. It is contended that he had made all his earnest efforts to get a reunion. But the first respondent was not willing to reside in the matrimonial home. In the counter affidavit, he expressed his willingness to pay Rs.2,000/- to the second respondent as maintenance allowance. But he denied the liability to pay maintenance allowance to the first respondent. He further admitted that he is employed in Water

Authority and is getting a gross salary of Rs.15,407/-, but receiving Rs.8,551/- as net salary. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance @ Rs.2,000/- each to the respondents. 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. The learned counsel for the revision petitioner advanced arguments challenging the findings whereby the court below determined the quantum of maintenance allowance; whereas the learned counsel for the respondents advanced arguments justifying the impugned order under challenge. The marital status of the first respondent and the paternity of the second respondent are not disputed. But, according to the revision petitioner, the first respondent was not willing to reside in his matrimonial home along with the other family members. It is the specific case of the revision petitioner that on 14/4/2010 he took the respondents to the first respondent's house and

thereafter he neglected to maintain them and refused to pay maintenance allowance. The revision petitioner has no case that after 14/4/2010 he had paid any amount towards maintenance of the respondents herein. I am of the opinion that the said conduct itself shows that the revision petitioner was reluctant to discharge the legal obligation envisaged under Section 125 of the Cr.P.C. The right to maintenance is a statutory right envisaged under Section 125 of the Cr.P.C. and it is for the husband to establish any of the grounds shown under sub-section (4) of Section 125 of the Cr.P.C., to get exonerated from the said liability to pay maintenance allowance. But, in the instant case, no evidence had been adduced from the part of the revision petitioner to show that the first respondent has refused to reside along with him without sufficient reasons. More over, he has not denied the specific allegation that he was residing with the respondents in the matrimonial home along with all other family members. In that circumstances, the allegation of the first respondent that the ill-treatment from the part of the family members was intolerable, cannot be brushed aside. In this analysis, I find that the court below can be justified in

finding that the respondents are entitled to get maintenance allowance from the revision petitioner.

4. What remains to be considered is, can the court below be justified in fixing the quantum of maintenance allowance. Admittedly, the petitioner is working as a Pump Operator in Water Authority and getting a monthly salary of Rs.16,000/-. Ext.P1 salary certificate shows that after deduction he is getting Rs.8551/- only. The petitioner has a statutory obligation to pay maintenance allowance in accordance with the status and day-to-day requirements of the respondents and also in accordance with his admitted salary. Even if the admitted income is taken into account as such, I am of the opinion that the court below can be justified in giving half of the admitted salary to the respondents 1 and 2. Thus, the quantum of maintenance allowance determined by the court below is just and proper, warranting no interference in revisional jurisdiction.

5. The learned counsel for the revision petitioner submits that the petitioner is unable to raise the required amount for remitting

arrear in lump sum. The learned counsel urged for granting some time to pay the entire arrear. Having regard to the facts and circumstances of the case, the petitioner is given four months time to pay the entire arrear provided that half of the entire arrear shall be remitted within two months and the balance shall be paid within the next two months. In the event of default in payment of first instalment, this instalment facility also will stand automatically vacated and the respondents will be at liberty to realise the entire amount in lump sum.

This R.P(FC). is dismissed.

Sd/-
(K.HARILAL, JUDGE)

okb.