

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. 253 of 2010 ()

AGAINST THE ORDER IN MC 275/2009 of FAMILY COURT,
KOZHIKODE DATED 09-03-2010.

REVISION PETITIONER/RESPONDENT:

SUNIL KUMAR, S/O.VELAYUDHAN,
KUNNUMPURATH HOUSE, P.O.NANNAMBRA,
(VIA) THAYYALAKUNDOOR, TIRURANGADI TALUK,
MALAPPURAM DISTRICT.

BY ADVS.SRI.K.P.SUDHEER
SRI.V.C.MADHAVANKUTTY

RESPONDENT(S)/PETITIONERS:

1. E.NISHA, D/O.KUNHAYYAPPAN,
ELAYADATHIL VEEDU, POST PERUVANNAMUZHI,
(VIA)PERAMBRA,
KOYILANDY TALUK, KOZHIKODE DISTRICT, PIN-673 528.

2. AVANTHIKA (MINOR), AGED 2 AND HALF YEARS,
REPRESENTED BY GUARDIAN MOTHER, 1ST RESPONDENT.

R1 & 2 BY ADV. SRI.M.T.BALAN
BY ADV. SRI.B.JAYABAL
BY ADV. SMT.B.VIJUBALA

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.253 of 2010

Dated this the 19th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.275 of 2009 on the files of the Family Court, Kozhikode. The above M.C. was filed by the respondents herein, who are the wife and child of the petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure from the petitioner. According to the 1st respondent, her marriage with the petitioner was solemnized on 13/6/2002 and the 2nd respondent is the child born in that wed-lock. They cohabited together up to 2009 and thereafter, the petitioner has been neglecting to maintain them and refused to pay maintenance allowance.

2. From the very beginning itself, she was being ill-treated with cruelty and harassment on demand of more gold ornaments and money. When the ill-treatment meted out to her by the mother of the petitioner became intolerable, she was constrained to leave the marital home; but the petitioner never enquired about the respondents thereafter. The 1st respondent was working as a Nurse at the time of marriage. But she was constrained to resign the job at the instance of the petitioner and thereafter, she has no job or any source of income. Now she is depending upon her parents for livelihood; whereas the petitioner is working abroad and getting ₹30,000/- per month. She claimed an amount of ₹3,000/- each for their maintenance allowance. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance at the rate of ₹1,500/- to the 1st respondent and ₹500/- to the 2nd respondent. The legality of the entitlement of the maintenance allowance and 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 petitioner advanced arguments challenging the findings, whereby the court below determined the entitlement of maintenance allowance and the quantum of maintenance allowance. According to the learned counsel, the quantum of maintenance allowance fixed by the court below is disproportionate with the income of the petitioner. In view of the above, the short question to be considered is, whether there is any illegality in the findings whereby the court below determined the entitlement of the maintenance allowance and fixed the quantum of maintenance allowance.

4. The marital status of the 1st respondent and the paternity of the 2nd respondent are not disputed. It has come out in evidence that after 2009, no amount had been paid to the respondents towards

maintenance allowance. Though he contended that the 1st respondent has refused to live with him, without sufficient cause, no evidence had been adduced to substantiate the said contention, in view of the burden of proof cast on him under sub-section (4) of Sec.125(1)(a) of the Cr.P.C. In the above view, the court below can be justified in finding that the respondents are entitled to get maintenance allowance from the petitioner.

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? Admittedly, the petitioner is working abroad. According to the 1st respondent, he is getting ₹30,000/- per month. But R.W.1, the father of the petitioner, deposed that his son is working in an advertisement company in Gulf country as a helper. However, the employment abroad is not disputed. I am of the opinion that if he is employed abroad in a company, as deposed by his father, it was for him to

prove his exact salary by documentary evidence. Income is a factor exclusively within the knowledge of a person who is getting it and it is for him to prove that he is getting so much income only. In the absence of evidence, which could have been produced by him before the court below, an adverse inference also can be drawn against him under Sec.114(g) of the Indian Evidence Act. R.W.1 stated that his son is receiving only ₹7,000/- per month. In the absence of any documentary evidence to prove the same, no reliance can be placed on the evidence of R.W.1. Even a coolie worker in the State of Kerala could have earned ₹400/- to ₹500/- per day in the year 2009. If that be so, the evidence of R.W.1 cannot be relied on for the determination of the quantum of maintenance allowance. The husband has statutory liability to pay maintenance allowance to his wife and children in accordance with their requirements. The petitioner has no case that he is physically challenged or incapacitated to do work. The respondents have the

right to live with the standard of life on par with that of the petitioner, who is an NRI for the last so many years. In the above view, the quantum of maintenance allowance determined at the rate of ₹1,500/- to the 1st respondent and ₹500/- to the 2nd respondent is just and proper, warranting no interference under the revisional jurisdiction of this Court.

This revision petition is accordingly dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge