

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.258 of 2010 ()

**AGAINST THE ORDER IN MC 209/2005 of FAMILY COURT,KOLLAM
DATED 31-05-2010**

REVISION PETITIONER/RESPONDENT :

**P.UNNIKRISHNA PILLAI,
AGED 35 YEARS, S/O.PRABHAKARAN, RESIDING AT AMBADI
KIZHAVOOR, MUKHATHALA P.O., KOLLAM DISTRICT.**

**BY ADVS.SRI.T.MADHU
SRI.B.K.RAJAGOPAL**

RESPONDENT(S)/PETITIONERS :

- 1. SMITHA S.PILLAI,
AGED 28 YEARS, D/O.PADMAKUMARI AMMA, SMITHA BHAVAN
PADINJATTAKKARA MURI, THEVALAKKARA VILLAGE
KOLLAM DISTRICT, PIN-690 524.**
- 2. KRISHNA PRABHAKAR, AGED 6 YEARS (MINOR),
REPRESENTED BY ITS MOTHER AND NEXT FRIEND
THE IST RESPONDENT HEREIN. DO. DO., PIN-690 524.**

**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.258 of 2010

Dated this the 13th day of February, 2015

ORDER

The petitioner and the respondents are the counter petitioner and the petitioners respectively in M.C.No.209 of 2005 on the files of the Family Court, Kollam. The 1st respondent herein is the wife of the petitioner and the 2nd respondent is the child born in that wed-lock. The respondents filed the above M.C. claiming maintenance allowance from the petitioner at the rate ₹2,000/- per mensem for the 1st respondent and ₹1,000/- per mensem for the 2nd respondent. According to the 1st respondent, her marriage with the petitioner was solemnized on 20/11/2003 and they lived together upto 2005. After the marriage, they resided together at the family house of the petitioner along with his mother, sisters and the their husbands. From the very beginning of the marriage, the petitioner and his family members ill-treated her with cruelty and humiliation. They

manhandled her brutally and eventually, she was constrained to leave the company of the petitioner apprehending danger to her life. Though she is a Post Graduate and worked provisionally as Guest Lecturer in a college, she has no permanent job or income and now the respondents are depending upon the 1st respondent's parents for their livelihood. On the other hand, the petitioner is a bank employee getting an income of ₹15,000/- per mensem as salary and also he has an income of ₹5,000/- from his landed property. After considering the evidence on record, the court below directed the petitioner to pay monthly maintenance allowance at the rate of ₹1,500/- to the 1st respondent and ₹1,000/- to the 2nd respondent. The legality of the entitlement of the maintenance allowance and the correctness of the determination of the quantum of maintenance allowance are under challenge in this revision petition.

2. The short question to be considered is whether there is any illegality or impropriety in the

findings whereby the court below directed the revision petitioner to pay maintenance allowance at the rate referred above.

3. Going by the impugned order, it is seen that though, the petitioner and respondents were lived together for a period of two years only, on her oral evidence, she had narrated sequences of events which would disclose both physical and mental harassment meted out to her by the petitioner and his family members. Within a short span of time the marital discord culminated in civil and criminal cases also. Admittedly, the proceedings initiated by the first respondent under Section 498(A) of the Indian Penal Code against the revision petitioner is also pending. After analysing the sequences of day to day events, the learned Judge who had an opportunity to witness the demeanour of the witness arrived at a finding that there are sufficient grounds to live separately, without forfeiting her right of maintenance. I have meticulously considered, the appreciation of evidence from which the learned Judge

arrived at such a findings. I do not find any kind of perversity in the appreciation of evidence. So there is no reason to interfere with the findings that the first respondent has right to get maintenance allowance from the petitioner. Thus the entitlement of maintenance allowance is justified.

4. The remaining question is to be considered, is whether there is illegality or error in the determination of the quantum of maintenance allowance. The petitioner is working as Junior Accountant in a Bank. His total gross monthly salary, by Ext.P1 Salary Certificate, is Rs.15,008/-. Though the petitioner contended that, the first respondent is employed as guest lecturer. No evidence had been adduced to substantiate the said contention. But the first respondent herself admitted that, she was employed as a professional Guest Lecturer for a period of two months only, in Dewaswom Board College, Sasthamkotta. In the absence of any contrary evidence to prove otherwise, it can be safely concluded that at present the petitioner has no job, so as to earn for her livelihood. The petitioner has

no case that she has any other sources of income.

5. Exts.P4 to P6 produced by the respondents shows that, the second respondent was born with a cleft lip and substantial amount was expended for the treatment of the second respondent. The child had under go treatment under ortho-dentist and paediatric dental specialists. PW1's evidence would show that, her parents had spent huge amounts for the treatment of the second respondent. There is no evidence to show that the petitioner has been spending any amount for the treatment of his child, the second respondent. Ext.P7 shows that the second respondent is studying in a private school. The respondents have the right to live with standard of life at par with that of the petitioner, who is a bank employee. Considering the standard of life, status of the parties, day-to-day living expenses and admitted income of the petitioner, I am of the opinion that the direction to pay maintenance allowances at the rate of Rs.1,500/- to the first respondent and Rs.1,000/ to the second respondent is just and proper warranting no

interference under revisional jurisdiction.

6. The learned Counsel for the petitioner submits that, though the petitioner is a bank employee, now he was suffering from acute financial crises and he needs some time to pay the arrears. He is willing to pay the arrear amount in instalments. Having regard to the said submissions, the petitioner is given four months time to pay the entire arrears, provided that he shall pay half of the entire arrears within two months and the balance within the next two months. In case of default in paying the first instalment, this instalment facility will stand automatically cancelled and the respondents is at liberty to realise the entire arrear in lump sum.

This revision petition is dismissed.

Sd/-
K.HARILAL
JUDGE

VS