

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

RPFC.No. 285 of 2010 ()

(MC 1009/2009 of FAMILY COURT, PALAKKAD DATED 31-3-2010)

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REVISION PETITIONER(S)/RESPONDENT:

K.K.SALEEM, S/O.SAIDUMUHAMMED,
KUNDAMKADAVATH HOUSE, COURT ROAD, PARAPPANANGADI.

BY ADV. SRI.K.K.MOHAMMED RAVUF

RESPONDENT(S)/PETITIONERS:

1. PULIKKAL SEENATH, D/O.LATE MUHMED,
VISWAS ROAD, KATTACHIRA, P.O. B.P.ANGADI
THALAKKADE AMSOM, THEVALAPPURAM DESOM, TIRUR.

2. MUHAMMED SHAHANAS, S/O.SALEEM (MINOR)
-DO-, -DO-.

3. HYFASHAHAL, D/O.SALEEM (MINOR) -DO-, -DO-.

RESPONDENTS 2 AND 3 REPRESENTED BY MOTHER
1ST RESPONDENT.

R1 TO 3 BY ADV. SRI.SAKIR.K.H.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 21-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.285 of 2010

Dated this the 21st day of August, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.1009/09 on the files of the Family Court, Malappuram, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance under Section 125 of the Cr.P.C. from the petitioner. According to the 1st respondent, their marriage was solemnised on 23.2.1997 and they are blessed with two children; but the petitioner has totally deserted the respondents since 15.7.2009. He has not paid any amount towards maintenance thereafter. The 1st respondent has no job or any source of any income; whereas the petitioner is a wholesale fish merchant and he was employed in Gulf for the last six years. While conducting fish business he was getting Rs.10,000/- and now he is getting Rs.20,000/- and that apart he is an agriculturist, who

is getting Rs.10,000/- per month.

2. The petitioner resisted the claim of the respondents, but admitted the marital status of the 1st respondent and the paternity of the respondents 2 and 3. He also admitted that he was employed abroad. But according to him, now he is a chronic diabetic patient and one side of his body was paralysed and he is undergoing treatment for the same. After returning from gulf he is employed as an Autorikshaw driver. According to him, the 1st respondent is a tailor and earning Rs.3,000/- per month. So she is able enough to maintain herself.

3. Heard the learned counsel for the revision petition. He vehemently contended that the petitioner is totally incapacitated to do any work and so he is unable to give maintenance allowance to the respondents. He drew my attention to Ext.B1 and submitted that the court below has failed to consider the same in its correct perspective. The learned counsel sought for another opportunity to adduce more evidence to substantiate the contention that he is physically incapacitated to do work so as to earn

livelihood for the respondents.

4. As regards the legality of the entitlement of maintenance allowance it has come out in evidence that on 6.12.09 the petitioner has contracted a second marriage with one Mumtaz. The petitioner has no case he has been paying maintenance allowance to the respondents after 2009 and no evidence was forthcoming to show payment of maintenance allowance after 2009. His second marriage itself shows that he was confident of his income and Ext.B1 is a document obtained only after the filing of the M.C. Even though the petitioner has contended that the 1st respondent is a tailor and earning Rs.3000/–, no evidence has been adduced to prove the same and thereby he failed to establish that the 1st respondent is able enough to maintain herself. In that view of the matter, it can be safely concluded that she has no job or any sources of income. In the above view of the matter, the court below is justified in finding that the respondents are entitled to get maintenance allowance.

5. It is admitted that he was a fish merchant, and

he was in gulf for six years and there he was getting Rs.30,000/- per month. It is also his admitted case that he is an autorikshaw driver. But his case is that now he is physically disabled and incapacitated due to diabetic complaint and paralysis. In evidence, Ext.B1 was produced before the court. The same was not proved in accordance with the law. Even if the contents of Ext.B1 are taken at its face value, it is a document obtained by him only after the filing of the M.C. Hence, as rightly contended by the court below, no reliance can be placed on Ext.B1 to arrive at a conclusion that he is totally disabled or incapacitated to do work. No medical evidence had been adduced to establish his alleged physical disability, except Ext.D1. Unless it is proved that his earning capacity has been lost due to the disease, he is liable to pay maintenance allowance to his wife and children in accordance with the needs of his wife and children. A husband is liable to pay maintenance allowance in accordance with the standard of life, living status and the day-to-day needs of his wife and children. "Maintenance" includes provision for food, shelter,

clothing, medical attendance and educational expenses of the children. In the instant case, the respondents 2 and 3 are minor school going children and a substantial amount is required for their educational expenses. In the above analysis, the quantum determined by the court below is just and proper and no interference is called for under revisional jurisdiction.

6. Learned counsel for the revision petitioner urged for remanding the case to the lower court so as to enable the revision petitioner to adduce more evidence to prove that his health condition has become more worse than at the time of passing the impugned order. As far as this case is concerned, under revisional jurisdiction, the scope of enquiry is confined to whether the court below has taken the decisions correctly in view of the evidence available on record. If the health condition has become more worse than at the time of passing the impugned order, it would fall under the change of circumstances and it is for the petitioner to seek remedies under Section 127 of the Cr.P.C. and this order will not stand in the

way of seeking such remedies. Since the court below has correctly decided the point to be considered on the basis of the evidence available on record, there is no need to remand the case to the trial court.

7. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the petitioner is given five months time to pay the arrear, provided that half of the entire arrear shall be paid within the first three months and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC). is dismissed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.