

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

RPFC.No. 296 of 2010 ()

AGAINST THE ORDER IN MC 13/2009 of FAMILY COURT, KOTTAYAM
DATED 22-06-2010.

REVISION PETITIONER/RESPONDENT IN M.C.:

MATHEW MATHAI, AGED 36 YEARS,
ADONIL GRACE VILLA, PATTOOR P.O., NOORNAD,
MAVELIKARA, REP.BY HIS POWER OF ATTORNEY
PHILIP MATHEW, ADONIL HOUSE, PATTOOR P.O.,
MAVELIKARA.

BY ADV. SRI.RINNY STEPHEN CHAMAPARAMPIL

RESPONDENT(S)/PETITIONER IN M.C.:

ELIZABETH KURIAN @ DIANA,
PARAPPEL HOUSE, THIRUVARPPU P.O., KOTTAYAM.

BY ADV. SRI.TOM JOSE (PADINJAREKARA)

THIS REV.PETITION(FAMILY COURT) HAVING BEEN
FINALLY HEARD ON 11-02-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.296 of 2010

Dated this the 11th day of February, 2015

ORDER

The revision petitioner is the respondent in M.C. No.13 of 2009 on the files of the Family Court, Kottayam. The respondent is the wife of the revision petitioner. According to her, the marriage with the petitioner was solemnized on 24/10/2005. The above petition was filed under Sec.125 of the Code of Criminal Procedure seeking maintenance allowance from the revision petitioner on the allegation that the revision petitioner neglected her and refused to pay maintenance allowance from 25/8/2008 onwards. She has no job or income. So, she is unable to maintain herself and now she is depending upon her parents.

On the other hand, the revision petitioner is working abroad and he is earning ₹80,000/- per month. His monthly salary is ₹25,000/- and in addition to that, he is getting ₹50,000/- as commission. The respondent claimed ₹3,000/- per month for her livelihood.

2. The revision petitioner filed a counter affidavit admitting the marital status of the respondent; but he denied the allegation that he has neglected her and refused to pay maintenance allowance. According to the revision petitioner, the respondent is residing separately without sufficient reason. After considering the rival contentions, the court below passed an order directing the revision petitioner to pay maintenance allowance at the rate of ₹1,500/- per month to the respondent. The legality and correctness of this order is under challenge in this revision petition.

3. It is the case of the revision petitioner, in this revision, that the respondent is living separately without sufficient reason and therefore, the court below went wrong by directing him to pay

maintenance allowance to the respondent. The court below ought to have found that the respondent left the matrimonial home without any reasonable excuse. Therefore, the court below ought to have found that the respondent/wife is not entitled to get maintenance allowance. It is also contended that the amount determined by the court below, as maintenance allowance, is disproportionate with his income.

4. Going by the impugned order, it is seen that the marital status of the respondent, as legally wedded wife of the petitioner, is not disputed. The revision petitioner has no case that he has paid the maintenance allowance to the respondent, after 25/8/2008. Though he has challenged the entitlement of maintenance allowance, he did not enter the witness box so as to give evidence to substantiate his contention that the respondent/wife is residing separately on her own accord without sufficient reason. Instead of him, his brother was examined as Power-or-Attorney Holder. In the absence of evidence

to prove his pleadings that the respondent always wanted to avoid the counter petitioner and living in her parental house on her own accord, the court below can be justified in arriving at a finding that the respondent is entitled to get maintenance allowance from the revision petitioner.

5. The remaining question to be considered is, whether the quantum of amount determined by the court below, as maintenance allowance, is excessive or disproportionate with the income of the revision petitioner? Admittedly, the petitioner is employed abroad. Though, he contended that he has no sufficient means to pay the maintenance allowance as claimed by the respondent and the amount quantified by the respondent as his monthly income is incorrect, no evidence has been adduced to substantiate the said contention. The exact income or salary of an employee is a matter exclusively within his knowledge and it is for him to adduce evidence to show that he is getting that much amount only as salary. In short, the

revision petitioner has miserably failed to prove his exact income, though he is employed. In such circumstances, the court below can be justified in relying on the evidence of the respondent.

6. The revision petitioner has no case that he is physically unhealthy or unabled or he has incapacitated to do work. If that be so, it could reasonably be presumed that he has sufficient earning capacity to maintain his wife. The amount determined by the court below, as maintenance allowance, is just and proper. There is no reason to interfere with the findings in the impugned order under challenge.

Hence, this revision petition is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge