

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

RPFC.NO. 299 OF 2010

MC 1021/2009 OF FAMILY COURT, MALAPPURAM

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REVISION PETITIONER(S)/RESPONDENT:

**MOIDEENKUTTY, S/O.SAIDALAVI,
CHEMPAYIL HOUSE, POST THENNALA, TIRURANGADI TALUK
MALAPPURAM DISTRICT,
THROUGH POWER HOLDER BROTHER ABDUL AZEEZ,
(AS IN THE COURT BELOW)**

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT(S)/PETITIONERS:

- 1. SUBAIDA, D/O.ALAVI, KARUPPATH HOUSE,
THENNALA, TIRURANGADI TALUK.**
- 2. NAFEE SUTHUL MISSARIYA,
D/O.SUBAIDA (MINOR)-DO-DO-**
- 3. MOHAMMED RABEEH,
S/O.SUBAIDA(MINOR) -DO-DO-
(RESPONDENTS 2 & 3 THROUGH MOTHER 1ST RESPONDENT)**

R1-3 BY ADV. SRI.K.P.SUDHEER

R1-3 BY ADV. SMT.M.SINDHU THANKAM

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 12-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.299 of 2010

Dated this the 12th day of March, 2015.

O R D E R

1.The revision petitioner is the respondent in M.C.No.1021/2009 on the files of the Family Court, Malappuram. He is the husband of the 1st respondent and the father of the respondents 2 and 3. The above M.C. was filed by the 1st respondent herein claiming maintenance allowance under Section 125 of the Cr.P.C. from the revision petitioner herein. According to the 1st respondent, the revision petitioner had neglected her and refused to pay maintenance allowance to them from August 2008 onwards. She has no job or income and she is unable to maintain herself and her children; whereas the revision petitioner has been working abroad for the last 20 years and he has sufficient means to pay maintenance allowance to the respondents. He is running a super market in Gulf. In addition to the said earnings, he has also other source of income. The respondents claimed maintenance allowance @ Rs.4,500/-, Rs.3,000/- and Rs.2,500/- per month.

2.The revision petitioner filed a counter statement disputing the marriage as well as the paternity. The said contention was not pressed into service while adducing evidence. Whereas his contention was that he had pronounced Talak and thereby he had divorced the 1st respondent in accordance with his personal law. It is also contended that he had married earlier and in his first wife he has six children. The first wife and the three children are suffering from mental illness and they are undergoing treatment for the same for long years. He had married the 1st respondent for the purpose of looking after the first wife and children. After the delivery of the respondents 2 and 3 the 1st respondent refused to nurse the first wife of the petitioner and children and demanded for separate residence. But he fairly admitted that he is employed in the house of an Arab in Gulf. But he denied the allegation that he is running a super market in the Gulf country. It is also contended that the 1st respondent is employed in a school and drawing Rs.5,000/- per month.

3.After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance @ Rs.2,000/- to the 1st respondent Rs.1,000/- to the 2nd respondent

and Rs.600/- to the 3rd respondent per month from the date of filing of M.C. 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.

4.The learned counsel for the revision petitioner advanced arguments challenging the findings of the court below whereby the petitioner was directed to pay maintenance allowance at the rates quantified above. According to the learned counsel the court below failed to consider the facts and evidence of the case in its correct perspective. It is also contended that the quantum of maintenance allowance determined by the court below is disproportionate with the income of the petitioner and hence the same is excessive.

5.As regards entitlement of the maintenance allowance, though the revision petitioner had disputed the marital status of the 1st respondent as well as the paternity of the children in his counter statement, the said contentions were not seriously pressed into service in evidence. On the other hand, he pleaded that he had pronounced Talak in accordance with his personal law. Though

such a contention was also raised, no evidence had been adduced to prove that he had pronounced Talak and thereby the marital tie had been broken in accordance with personal law. Going by the findings I do not find any reason to interfere with the finding that the respondents are entitled to get maintenance allowance from the revision petitioner.

6. What remains for consideration is the correctness of the quantification of maintenance allowance by the court below. Admittedly, the revision petitioner has been employed in the house of an Arab in Gulf for the last 12 years. He has no case that he is physically disabled or incapacitated to work so as to earn livelihood for his family. According to the Power of Attorney of the revision petitioner, who was examined as R.W.1, the revision petitioner is well employed in Kuwait for more than 12 years. When he was confronted with a question suggesting that the revision petitioner is owning 8 acres of landed properties, R.W.1 could not deny it. That apart, R.W.1 himself claimed that there are documents in his possession to prove the exact salary of the revision petitioner. But those documents were not produced in evidence. In the absence of those documents, an adverse inference also can be drawn against the

revision petitioner under Section 114(g) of the Indian Evidence Act. As rightly observed by the court below, the fact remains that he has opted for luxury of having more than one wife at a time and continues in Kuwait for about 2 decades; whereas the respondents have no income and they are depending upon their relatives. The respondents 2 and 3 are aged 12 and 6 years and they are school going children who need considerable amount for education.

7. Having regard to the status of the petitioner as as NRI and the day-to-day living expenses of the respondents I am of the opinion that the quantum of maintenance allowance determined by the court below is just and proper warranting no interference under revisional jurisdiction.

This revision is devoid of merits and dismissed accordingly.

Sd/-
(K.HARILAL, JUDGE)

okb.