

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. 335 of 2010 ()

MC 49/2008 of FAMILY COURT,KOZHIKODE

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REVISION PETITIONERS/PETITIONERS:

- 1. SUMATHI, AGED 28 YEARS, S/O.CHOYL,
PANAYULLATHIL MEETHAL HOUSE, P.O.VILLIAPPALLY
VADAKARA.**
- 2. NANDU, (MINOR), AGED 4 YEARS,
REPRESENTED BY MOTHER IST PETITIONER.**

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/RESPONDENT:

**SASI, AGED 34 YEARS, S/O.KUMARAN,
PONNAMPARAMBATH HOUSE, P.O.THINUR, NARIPATTA
KAIVELI, VADAKARA TALUK.**

**BY ADV.SRI.A.ANTONY
BY ADV.SMT.LEELAMMA ANTONY**

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

okb

K.HARILAL, J.

R.P(F.C). No.335 of 2010

Dated this the 11th day of February, 2015

O R D E R

Petitioners are the petitioners in M.C. No.49/2008 on the files of the Family Court, Kozhikode. The 1st petitioner is the wife of the respondent and the 2nd petitioner is the child born in that wedlock. According to the 1st petitioner, the marriage was solemnised on 30/12/2000 and they lived together upto 24/3/2006. On 24/3/2006 the respondent took her to her house. But thereafter he never came to her house to take her back. It is alleged that the respondent had neglected to maintain the petitioners and refused to pay maintenance allowance to them from 24/3/2006 onwards. The 1st petitioner has no job or income and she is unable to maintain herself. Now she is depending upon her parents for their livelihood. On the other hand, according to the 1st petitioner, the respondent is earning Rs.15,000/- per month from his job. He is also having immovable property and earning more than Rs.3,000/- from the property. The petitioners require Rs.8,000/- per month for their maintenance, medicines, etc. So the

1st petitioner claimed Rs.3,000/- and the 2nd petitioner claimed Rs.5,000/- per month towards maintenance allowance. The respondent filed a counter affidavit admitting the marital status of the 1st petitioner and the paternity of the 2nd petitioner. But he denied the allegation that he has been neglecting to maintain them and refusing to pay maintenance allowance. According to him, the 1st petitioner is residing separately without sufficient reasons. It is also contended that he is unable to do work due to his physical incapacity, though he is a coolie and now he is bedridden in a hospital and undergoing treatment. In short, he has no means to pay maintenance allowance to the petitioners.

2. On the above pleadings, the 1st petitioner was examined as P.W.1 and the father of the respondent was examined as R.W.1. The Doctor, who treated the respondent, was examined as R.W.2. Exts.A1 to A4 were marked for the petitioners and Exts.B1 to B4 were marked on behalf of the respondent. Exts.X1 and X2 were marked as witness exhibits. After considering the evidence on record, the court below rejected the petitioners' claim for maintenance on a finding that the respondent is unable to pay maintenance allowance to the petitioners as he is not earning due to his physical incapacity. The legality and correctness of the

findings whereby the court below rejected the claim of the petitioners are under challenge in this revision petition.

3. Though this Revision Petition is filed on various grounds, the learned counsel for the revision petitioners focussed his arguments to assail the finding that the respondent is unable to earn livelihood as he is physically unable to do work so as to eke out livelihood for his family. According to the learned counsel, the said finding is erroneous and unsustainable in view of the evidence adduced by the respondent. To substantiate the said point, the learned counsel drew my attention to Exts.B1 to B4 and the oral evidence of R.W.2, the Doctor who treated the respondent for his alleged disease. The sum and substance of the arguments by the learned counsel is that Exts.B2 deposition and B4 medical certificate are not sufficient to draw an inference that the respondent is permanently disabled or incapacitated to do any job.

4. Per contra, the learned counsel for the respondent advanced arguments to justify the finding that the respondent is unable to do any work so as to eke out livelihood for his family. According to him, Exts.B1 to B4 and Exts.X1 and X2 are sufficient enough to arrive at a conclusion that the respondent is totally bedridden and he is physically incapacitated to do any job.

5. I have given my anxious consideration to the evidence on record, in the light of the arguments at the Bar. The question that arises for consideration in this revision is whether there is any illegality or impropriety in the finding that the respondent is unable or physically incapacitated to do work so as to earn income for the livelihood of his family?

6. Going by the impugned order it is seen that the court below has relied on Exts.B1 to B4 and Exts.X1 & X2 and the evidence of R.W.2 and arrived at a finding that the respondent is physically unable to do any kind of work. Ext.B2 is the certificate dated 16/5/2009 in which R.W.2 the Doctor has certified that the respondent had been under his treatment at Govt. Ayurveda Hospital, Vatakara for the complaint of 'Gredhrasi' for the period from 14/2/2009 to 12/4/2009 and also certified that he has been undergoing treatment at his hospital for the complaint of 'Gredhrasi' since 15.4.2009. This certificate does not say anything about his physical condition except mentioning of the name of the disease. Coming to Ext.B4 it is seen that this certificate also has been issued by R.W.2 on 4/01/2010 which says that the respondent was suffering from 'Gredhrasi' for the last one year and he was under his treatment at his hospital at Vatakara as outpatient since

5/10/2009. This certificate also does not refer to anything about his physical condition or incapacity except mentioning of the name of the disease.

7. Coming to the evidence of R.W.2, when he was cross-examined, he deposed that 'low back ache' is the symptom of the disease and, if he takes rest, he can go for his work. He further admitted that this disease is not curable always; in the case of the respondent, to a certain extent, there is improvement.

8. It is pertinent to note that Exts.B2 and B4 certificates relate to a period 2009-2010 only and M.C. was filed in the year 2008. As rightly contended by the learned counsel for the petitioners, averments in the statement filed by the respondent in C.M.P. No.604/08 in M.C. No.49/08 show that that he has no physical disability as on 26/5/2008 and it is specifically stated that while he was travelling in a bus he was constrained to stop travelling due to the defect of the bus and thereafter, when he reached the court, it is learnt that the case was taken up for hearing and order was passed ex parte. What is discernible from the above statement is that he has no physical disability even after the filing of the maintenance case.

9. The right to get maintenance allowance from the husband

is a statutory right envisaged under Section 125 of the Cr.P.C. I am of the opinion that such a statutory right can be declined only on sufficient reasons as envisaged under the said provision. On an analysis of Exts.B2 and B4 medical certificates coupled with the evidence of R.W.2, I am of the opinion that these certificates or evidence adduced by R.W.2 are not sufficient to arrive at a finding that the respondent is physically disabled or incapacitated to do work so as to earn for the livelihood of his family.

10. Merely on the reason that the respondent was suffering from back ache and was admitted in a hospital as an inpatient for two or three months it cannot be reasonably presumed or inferred that he has lost his physical capacity to do work. The physical disability is a matter which can be brought out in evidence by producing the certificates issued by the competent Doctor specifically stating that the patient has permanently lost his physical capacity and he is unable to do work. Such an inference cannot be drawn from the evidence adduced by the respondent.

11. In this analysis, I find that the court below miserably failed to appreciate Exts.B1 to B4 and the oral evidence of R.W.2 in their correct perspective. Further, I find that the appreciation of evidence on the above documents is vitiated by perversity

warranting interference under revisional jurisdiction. I find that the finding of the court below that the petitioners are not entitled to get maintenance allowance is unsustainable and hence, liable to be set aside and I do so. I find that the petitioners are entitled to get maintenance allowance from the respondent.

12. The next question to be considered is whether the petitioners are entitled to get maintenance allowance at the rate as claimed by them?

13. I am of the opinion that since the trial court has not arrived at a finding on that question, it has to be decided at first by the trial court itself. Hence, the impugned order under challenge is set aside and the matter is remitted to the trial court for determining the question of quantum of the maintenance allowance payable to the petitioners. The parties are at liberty to adduce evidence on this question and they shall appear before the trial court on 16/3/2015.

In the result, this revision petition will stand allowed.

Sd/-
(K.HARILAL, JUDGE)

okb.