

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

RPFC.No. 340 of 2010

MC 184/2009 OF THE FAMILY COURT, MALAPPURAM

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REVISION PETITIONER/RESPONDENT::

**PARAKKOTTU ABDUL HAMEED,
S/O.ABOOBACKER, UPPAKKULAM, EDATHANATTUKARA
PONPARA P.O, NATTUKAL.**

**BY ADVS.SRI.BABU S. NAIR
SMT.M.T.SHEEBA**

RESPONDENT(S)/PETITIONER::

**VARANGODAN RAMLA NAFEESA,
D/O.MOIDEEN, PULPATTA AMSOM, DESOM,
KARUVAMBRAM P.O, MALAPPURAM DISTRICT, PIN-676 121.**

BY ADV. SRI.P.M.RAFIQ

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 27-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

okb

K.HARILAL, J.

R.P(FC). No.340 of 2010

Dated this the 27th day of February, 2015

O R D E R

The petitioner is the respondent in M.C.No.184/09 filed by the respondent herein claiming maintenance allowance under Section 125 of the Code of Criminal Procedure from the petitioner. According to the respondent, she is the legally wedded wife of the petitioner and their marriage was solemnised in the year 1990 and they lived together upto 2008. It is the specific case of the respondent that while the marriage with the respondent was subsisting, the petitioner again married another lady and now he is living along with that lady by name Sakkeena. Due to the ill-treatment and harassment meted out to her she was constrained to leave the company of the petitioner and thereafter she is residing separately with her parents. According to her, she has no job or income whereas the petitioner is an ex-NRI who had been working in Gulf country for 20 years. He was conducting a fancy shop there and he is also getting Rs.60,000/- per month from his earnings.

2. The petitioner filed a counter statement admitting the marital status of the respondent as his wife, but denied all the

allegations in the petition. He himself admitted that he married again. But, according to him, the second marriage was at the instance of the respondent. He denied the allegation that he is getting Rs.60,000/- as his monthly income whereas he contended that though he was working in Gulf country, he was deported from there after impounding his passport. Therefore, he could not return to resume his job at Jeddah. He contended that the respondent left his company on her own accord without sufficient reasons.

3. On the above pleadings, the respondent was examined as P.W.1 and the petitioner was examined as R.W.1. R.W.2 and R.W.3 are his father and sister. Exts.B1 to B3 were also marked. After considering the evidence on record, the learned Family Court Judge directed the petitioner to pay maintenance allowance at the rate of Rs.3,000/- per month. The legality and propriety of the findings whereby the court below directed the revision petitioner to pay maintenance allowance at the rate referred above are under challenge in this Revision Petition.

4. The learned counsel for the petitioner advanced arguments challenging the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance determined by the court below. According to the learned counsel,

the court below miserably failed to consider the facts and evidence in its correct perspective. It is also contended that the quantum of amount directed to be paid as maintenance allowance is disproportionate with the income of the petitioner that was proved in evidence.

5. Per contra, the learned counsel for the respondent advanced arguments to justify the findings whereby the court below directed the petitioner to pay maintenance allowance to her at the rate of Rs.3,000/- per month.

6. The short question that arises for consideration is whether there is any illegality or impropriety in any of the findings whereby the court below directed the revision petitioner to pay maintenance allowance to the respondent at the rate of Rs.3,000/- per month.

7. The marital status of the respondent as the legally wedded wife is not disputed. It is also admitted that while the marriage with the respondent is subsisting he again contracted another marriage with a lady by name Sakkeena and now he is residing along with the second wife. Though he contended that the second marriage was contracted at the instance of the respondent, no evidence had been adduced to substantiate the said contention. In view of the fact that while the marriage with

the respondent is subsisting he married another woman, the respondent can be justified in living separately and claiming maintenance allowance, though the petitioner's personal law permits him to marry more than once. But, at the same time, even according to the personal law, he is liable to maintain all wives equally. Therefore, the 1st respondent has the right to live with the standard of life on par with that of the second wife. The petitioner himself in evidence admitted that he had been working in Gulf country for 20 years. Therefore, in view of the said admission, it can reasonably be presumed that he has sufficient earnings to maintain his family. I am of the opinion that his conduct of contracting a second marriage itself is sufficient to show that he was so confident enough to maintain his two wives equally. The petitioner has no case that he is physically disabled or unhealthy or incapacitated so as to earn for his livelihood. Though the petitioner has contended that he has been paying maintenance allowance to the respondent after 2008, no evidence had been adduced to substantiate the said contention. Therefore, it can safely be concluded that the respondent is entitled to get maintenance allowance from the petitioner.

8. What remains for consideration is as to whether the court below can be justified in determining the quantum of maintenance

allowance at the rate of Rs.3,000/- per month. Having regard to the admission of the petitioner himself that he had been working in Gulf country for 20 years, it can reasonably be presumed that he had earned sufficiently so as to maintain his family. The petitioner has a liability to pay maintenance allowance in accordance with the living status and day-to-day living expenses of the respondent. In the above view, the quantum of maintenance allowance determined at the rate of Rs.3,000/- per month is just and proper. I do not find any reason to interfere with the determination of the quantum of maintenance allowance also.

9. Having regard to the entire facts and circumstances of the case, the petitioner is given four months time to pay arrear amount to the respondent, provided that half of the entire arrear shall be paid within two months from today and the balance amount shall be paid within the next two months. It is made clear that in the event of failure to pay the first instalment within the stipulated time, this instalment facility will stand vacated and the respondent will be at liberty to realise the entire amount in lump sum.

This R.P(FC) is dismissed.

Sd/-
(K.HARILAL, JUDGE)

okb.