

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. 345 of 2010

AGAINST THE ORDER IN MC 62/2009 of FAMILY COURT, KOTTAYAM
AT ETTUMANOOR.

REVISION PETITIONER/COUNTER PETITIONER:

THEJAS JOSE, ENGINEER,
KURUMBA TRUST, SHOBHA HERITTAGE, PANNIYANKARA P.O.
PALAKKAD DISTRICT.

BY ADVS.SRI.N.JAMES KOSHY
SRI.T.SANJAY

RESPONDENT(S) /PETITIONER:

K.J.JOSE, KANJIRAKKATTU HOUSE,
VANDANPATHAL P.O., MUNDAKAYAM,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.BANI

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. 345 of 2010

Dated this the 11th day of February, 2015

ORDER

The revision petitioner is the counter petitioner in M.C.No.62 of 2009 on the files of the Family Court, Kottayam at Ettumanoor. The above M.C. was filed by the respondent herein, who is the father of the petitioner, under Section 125(1)(d) of the Code of Criminal Procedure Code, claiming maintenance allowance from the petitioner. It is the case of the respondent that he is aged 64 years and, at present, he has no job or income and he is unable to maintain himself. Moreover, he is suffering from so many old age diseases; whereas the petitioner herein is working as an Engineer and earning ₹30,000/- per month.

Thus, he has sufficient means to pay maintenance allowance to him. He requires ₹5,500/- per month as his maintenance. He is residing in a rented house and he has to pay ₹2,250/- for his food and ₹1,000/- for his treatment expenses. Now, he is depending on his brother and relatives. Though the respondent has another daughter, she is also not looking after him.

2. The respondent filed a counter statement admitting his paternity; but denied the allegation that the respondent has no means for his livelihood and he is unable to maintain himself. It is his specific case that the respondent had abandoned his family consisting of the petitioner, his mother and sister. Since 1986, the respondent had totally neglected them and refused to pay maintenance allowance to them. So, he has no right to claim maintenance allowance from the petitioner. He was brought up and educated by his mother alone, who was working in Kuwait till 1990. His mother was constrained to leave Kuwait consequent on the Kuwait war and thereafter,

the entire family was suffering from financial difficulties; whereas, after abandoning the family, the respondent was leading a wayward life. It is also contended that the respondent is conducting a language institute by name 'Institute of British American Language' and he is earning a substantial amount as fee from the coaching classes which are being conducted in that institution. That apart, he had sold away the landed property having an extent of 80 cents in the year 1994 and thereafter, he is having liquid cash in his hand. In short, the respondent is able enough to maintain himself. According to him, he is getting ₹8,000/- as salary and he has to maintain the family consisting of his mother and sister with that amount.

3. Both parties adduced evidence - both oral and documentary. The respondent was examined as P.W.1, another witness was examined as P.W.2 and Exts.P1 to P19 were marked. The petitioner was examined as C.P.W.1 and his mother was examined as

C.P.W.2. Exts.D1 to D3 were also marked in evidence. After considering both oral and documentary evidence, the court below directed the petitioner to pay maintenance allowance at the rate of ₹2,000/- per month to the respondent. The legality of the entitlement of maintenance allowance and the correctness of the quantum of amount determined by the court below are under challenge in this revision petition.

4. The learned counsel for the petitioner advanced arguments challenging the findings, whereby the court below found that the respondent is entitled to get maintenance allowance from the petitioner. So also, the learned counsel for the petitioner contended that the quantum of maintenance allowance fixed by the court below is excessive and disproportionate with the income of the petitioner.

5. Per contra, the learned counsel for the respondent advanced arguments justifying the finding

of the court below that the respondent is entitled to get maintenance allowance. It is also submitted that the quantum of maintenance allowance determined by the court below is just and proper and warranting no interference under the revisional jurisdiction.

6. Heard. I have given my anxious consideration to the rival submissions made at the Bar. The first question to be considered is, whether the court below can be justified in finding that the respondent is entitled to get maintenance allowance from the petitioner?

7. According to Sec.125(1)(d) of the Cr.P.C., the father is entitled to get maintenance allowance, if his son, having sufficient means, neglects or refuses to maintain his father and the father is unable to maintain himself.

8. In the instant case, it is the specific case of the respondent that he has no means to live and thereby, he is unable to maintain himself. Per contra, the petitioner contended that the respondent is

conducting a language institute by name 'Institute of British American Language' and he is getting substantial amount from that institute for his livelihood. In cross-examination, the respondent himself admitted that he had been conducting that institute as alleged by the petitioner; but he closed the same four months ago. Ext.D2 is the visiting card of the respondent as Co-ordinator of the above Institute. The petitioner had produced Ext.D3 news paper dated 19/8/2009 containing advertisement of the said Institute published by the respondent himself. No evidence had been adduced to show that the Institute had already been closed. Therefore, in view Exts.D2 and D3, it cannot be believed that, at present, he has closed the said Institute.

9. The respondent has produced Exts.P4 to P10 to show that he is physically incapacitated so as to earn for his livelihood. But, I am of the opinion that Exts.P4 to P10 are not sufficient to arrive at a conclusion that he is totally disabled or he had completely lost his

earning capacity. It is true that he is suffering from old age diseases. In the absence of medical certificate from a competent authority, it is not possible to believe that he has completely lost his earning capacity. It is also true that he requires a substantial amount for his treatment.

10. On an overall appreciation of evidence, I find that the respondent has failed to prove that he has completely lost his earning capacity. That apart, Ext.P17 shows that in the year 1994, he has sold away 80 cents of property to P.W.2. The respondent has no claim that he had looked after his family after 1986. No explanation or evidence had been given as to how did he spend the money which he had obtained from the above sale of property.

11. On an over all appreciation of the entire evidence given by P.W.1, I am unable to believe that he has completely lost his earning capacity and has no means at all. But, considering his old age, a substantial amount is required for his old age

diseases. It could be reasonably presumed that even though he is earning, that amount is not sufficient to meet his expenses. In short, he has means, but the same is not sufficient to maintain himself. The petitioner is also liable to contribute some amount for the living expenses of the respondent. On the above premises, the court below can be justified in finding that the respondent is entitled to get maintenance allowance.

12. What remains to be considered is, whether the quantum of maintenance allowance fixed by the court below is just and proper. I have already held that it is unable to believe that the petitioner has no means; but, his present income is not sufficient to meet his whole expenses. At the same time, the petitioner cannot be burdened with liability to meet the respondent's entire living expenses.

13. The quantum of maintenance allowance must be proportionate with the income of the petitioner. The petitioner has to look after his mother and sister,

who had already been neglected by the respondent. Though, the respondent contended that the petitioner is getting ₹30,000/- per month, no evidence has been adduced to prove the said contention. Now, the salary of the petitioner alone is the sole source of income of his family. In this view of the matter, I find that the quantum of maintenance allowance fixed by the court below is a little excessive and disproportionate.

14. Hence I re-fix the quantum of maintenance allowance at the rate of ₹1,500/- per month. The petitioner is directed to pay maintenance allowance at the rate of ₹1,500/- per month to the respondent.

This revision petition is disposed of accordingly.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge