

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

RPFC.No.375 of 2010 ()

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AGAINST THE ORDER IN MC 52/2010 of FAMILY COURT, MALAPPURAM
DATED 29-06-2010
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PETITIONER/RESPONDENT :

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AYOOB, 27 YEARS,
S/O.ASSAINAR @ CHERIYA BAVA,
KAMMAKKANDE PURAKKAL(H)
P.O.PARAVANNA, PUTHANANGADI.**

**BY ADVS.SRI.C.V.MANUVILSAN
SMT.K.VIDYA**

RESPONDENT(S)/PETITIONERS :

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- 1. KOLLARIKKAL SEMEERA, 22 YEARS,
D/O.ABOOBACKER, PURATHOOR AMSOM,
PADINHARAKKARA DESOM, TIRUR.**
 - 2. FATHIMMATH FASAHA, 10 MONTHS(MINOR),
D/O.SEMEERA, MINOR PETITIONER IS REP.BY GUARDIAN
MOTHER, IST RESPONDENT.**

**R1 & 2 BY ADV. SRI.JAMSHEED HAFIZ
ADV. SRI.P.G.SURESH**

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 13-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

R.P.(F.C.)No.375 of 2010

Dated this the 13th day of February, 2015

ORDER

The petitioner is the respondent in M.C.No.52 of 2010 on the files of the Family Court, Malappuram, which was filed by the respondents under Sec.125 of the Code of Criminal Procedure seeking maintenance allowance from the petitioner. The 1st respondent is the wife of the petitioner and the 2nd respondent is the child born in that wedlock. According to the 1st respondent, she is legally wedded wife who is entitled to get maintenance allowance from the petitioner under Sec.125 of the Cr.P.C. and the 2nd respondent, being a child born in the said wedlock, is also entitled to get maintenance allowance from the revision petitioner.

2. The 1st respondent has no job or income so as to eke out livelihood for her and for the 2nd respondent. According to her, their marriage was solemnized on 8/11/2007 and they cohabited together till the birth of the 2nd respondent. Thereafter, the petitioner left away from

the company of the respondents and he has neglected to maintain them. He refused to pay maintenance allowance from 2008 onwards. The petitioner is a Madrassa teacher and also is engaged in arranging religious study classes with an income of ₹25,000/- per month. The respondents are in need of ₹3,000/- and ₹2,000/- respectively to meet their monthly expenses. Hence they prayed for a direction to pay monthly maintenance allowance at the rate of ₹3,000/- to the 1st respondent and ₹2,000/- to the 2nd respondent.

3. In the counter, the petitioner admitted the marriage and paternity of the child. According to the petitioner, the marriage with the 1st respondent was the first marriage. He has no case that the 1st respondent has any job or income or she is able enough to maintain herself. It is his case that he is not earning ₹25,000/- per mensem as alleged by the respondents. On the other hand, he is only a coolie. He never employed as a Madrassa teacher and he is not a religious orator. He has to look-after his parents. Therefore, he is unable to pay

maintenance allowance as claimed by the respondents. After considering the rival contentions, the court below directed the petitioner to pay maintenance allowance at the rate of ₹2,000/- to the 1st respondent and ₹500/- to the 2nd respondent. The entitlement of maintenance allowance and the determination of the quantum of maintenance allowance are under challenge in this revision petition.

4. The learned counsel for the petitioner advanced arguments challenging the findings of the court below. According to the learned counsel for the petitioner, the court below went wrong by appreciating the evidence in common, particularly when M.C. is filed under Sec.125 of the Cr.P.C. and other O.P. is filed for recovery of gold ornaments under civil jurisdiction. It is also contended that the 1st respondent failed to prove that the petitioner has an income of ₹25,000/- per mensem since he is working as a coolie. The amount directed to be paid as maintenance allowance per month is exorbitant and disproportionate with his actual income.

5. Per contra, the learned counsel for the respondents advanced arguments to justify the entitlement of maintenance allowance and determination of the quantum of maintenance allowance. The short question that arises for consideration is, whether the court below can be justified in finding that the respondents are entitled to get maintenance allowance from the petitioner and the petitioner is liable to pay maintenance allowance at the rates referred above. The marriage and the paternity of the 2nd respondent are admitted. The petitioner has no case that the 1st respondent has job or any income. In short, he has no case that the 1st respondent is able enough to maintain herself and the 2nd respondent. Similarly, the petitioner has no case that he has been paying maintenance allowance to the respondents. So also, the petitioner failed to prove that the respondents are living separately without any sufficient reason.

6. If that be so, I am of the view that the court below can be justified in finding that the respondents are

entitled to get maintenance allowance from the petitioner. The Counsel for the petitioner contended that, the court below went wrong by appreciating the evidence in common and rendering the common judgment thereunder, particularly when the manner of appreciation of evidence is different and distinct. But going by the impugned order, it is seen that, though, the evidence was collected in common, the said evidence falling under each issue was segregated separately and appreciated differently, after framing specific issues. Therefore, collection of evidence in common didn't cause any kind of prejudice to the petitioner.

7. The remaining point to be considered is, whether there is any error in the determination of the quantum of maintenance allowance? Though the petitioner pleaded that he is only a coolie, and not a Madrassa teacher, Ext.X1 proves that after abandoning the respondents, he married again and now living along with his second wife. I am of the opinion that, the said conduct of the petitioner himself proves that, he was so

confident of his capacity to maintain more than one wife at a time. Though, his personal law permits him to marry more than once, the personal law itself mandates that he has to look after all the wives equally. He has admitted that, he is an able bodied man without any health problem. The learned Judge who had an opportunity to witness the demeanour of the witness observed that, in appearance he is a man of robust health. If that be so, it could be reasonably presumed that, an able bodied man, who is ready to work, is having sufficient means to maintain his family. Though, he contended that, he has to look after his parents, in cross-examination, he admitted that, his parents have six children. If that be so, it cannot be believed that, he is the only person who is liable to look after his parents. So he cannot escape from the statutory liability to pay maintenance allowance to his wife and children under the guise of his liability to pay maintenance allowance to his parents.

8. The wife and children are entitled to get maintenance allowance in accordance with their standard

of life and family status. They have the right to claim maintenance allowance in accordance with the standard of life at par with that of the petitioner. Having regard to the above view, I am of the opinion that, the quantum of amount directed to be paid to the respondents is just and proper warranting no interference under the revisional jurisdiction of this court.

9. Coming to arrear due to the respondents as maintenance allowance, the petitioner is given four months time to pay the arrear provided that half of the entire arrear shall be paid within two months and the balance within the next two months. In case of any default in payment of first instalment, this instalment facility will stand cancelled and entire amount can be realised in lump sum.

This revision petition is dismissed accordingly.

Sd/-
K.HARILAL
JUDGE

VS