

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. 391 of 2010 ()

MC 55/2008 of FAMILY COURT, ALAPPUZHA

REVISION PETITIONER/PETITIONER:

**KRISHNASREE, D/O.USHADEVI,
NARAYANEYATHIL HOUSE, MEMANA MURI, OCHIRA VILLAGE
KARUNAGAPPALLY, KOLLAM DISTRICT.**

**BY ADVS.SRI.K.S.ARUN KUMAR
SMT.M.N.MAYA**

RESPONDENT(S):

**ROHIT THILAK,
AGED 30 YEARS, USHASIL, UMBARANAD
KALLUMALA P.O., MAVELIKKARA, ALAPPUZHA DISTRICT
PIN-690110.**

R1 BY ADV. SRI.DENIZEN KOMATH

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 27-02-
2015, ALONG WITH RPFC. 409/2010, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). Nos.391 & 409 of 2010

Dated this the 27th day of February, 2015

O R D E R

These revision petitions arose from the order passed in M.C.No.55 of 2008 on the files of the Family Court, Alappuzha, which was filed by the revision petitioner in R.P.(FC) No.391 of 2010 against the revision petitioner in R.P.(FC) No.409 of 2010. The revision petitioner in R.P.(FC) No.391 of 2010 is the wife of the revision petitioner in R.P.(FC) No.409 of 2010. (For the sake of convenience, parties are referred to as in the M.C.). According to the petitioner, she is the legally wedded wife of the respondent and their marriage was solemnized on 11/5/2005. No children had been born out in that wed-lock. According to the petitioner, the respondent is an epileptic patient, so that he is not capable of discharging his marital obligation to the petitioner. She and her relatives wanted to terminate the matrimonial relationship in accordance with law. But he refused to co-operate for the dissolution of marriage and he purposefully deserted her. Now

she is under the care and protection of her parents. According to her, she has no job or income so as to earn for her livelihood. On the other hand, the respondent has got a deposit of Rs.35 lakhs in a bank at Mavelikara and he has got landed property also. In short, she is unable to maintain herself; whereas the respondent has sufficient means to pay maintenance allowance to her. She claimed maintenance allowance at the rate of Rs.3,000/- per month.

2. The respondent filed an objection admitting the marital status of the petitioner; but he contended that he is not responsible for the separation of spouses. It is his case that the petitioner is a mentally ill person and he is not suffering from any kind of illness or disease as alleged by the petitioner. It is also contended that due to her psychopathic disorder she could not discharge her marital obligation to the respondent. In the above circumstance, at the instance of the N.S.S. Karayogam authorities, they have entered into an agreement to live separately. The said agreement was executed on 20/8/2005 and ever since 2005 the spouses have been living separately by mutual consent. All monetary liabilities were settled and gold ornaments in the possession of each spouse were exchanged. So, in view of the agreement to live separately by mutual consent, the petitioner is

not entitled to claim maintenance allowance from him. It is also contended that he is not having a deposit of Rs.35 lakhs whereas the petitioner is a Beautician by profession, who is earning an income of Rs.8,000/- per mensem. So she is able enough to maintain herself.

3. On the above rival pleadings both parties adduced evidence. The petitioner was examined as P.W.1 and Exts.A1 to A3 were marked. The respondent was examined as R.W.1 and Exts.B1 and B2 were marked. After considering the evidence on record, the learned Family Court Judge directed the respondent to pay maintenance allowance @ Rs.1,000/- per month. The legality and propriety of the entitlement of maintenance allowance and the correctness of the quantum of amount directed to be paid as monthly maintenance allowance are under challenge in this revision petition.

4. The learned counsel for the revision petitioner in R.P(FC). No.409 of 2010 advanced arguments challenging the findings of the court below that the petitioner is entitled to get maintenance allowance from the respondent. The sum and substance of the arguments is that they are living separately under Ext.B1 agreement. In Ext.B1 agreement both parties mutually agreed to live separately. Therefore, in view of sub-clause (4) of Section 125

of the Code of Criminal Procedure, the petitioner is not entitled to get maintenance allowance from the respondent as she is living separately by mutual consent. To fortify the said argument, the learned counsel drew my attention to paragraph 8 of the impugned judgment.

5. Per contra, the learned counsel for the revision petitioner in R.P(FC).No.391 of 2010 advanced arguments to justify the findings of the court below that she is entitled to get maintenance allowance. According to the learned counsel, the mutual consent, which is said to have been proved under Ext.B1, is legally unsustainable. The court below went wrong by relying on the decisions in O.P.(OS) No.422 of 2008 and O.P(HMA) No.949 of 2006. The sum and substance of the arguments is that no reliance can be placed on any of the findings in the judgment passed in the above original petitions unless the judgment forms part of records in the instant case. Personal knowledge of the Judge cannot be imported to arrive at a finding that they are living separately by mutual consent. It is also contended that the quantum of maintenance allowance determined by the court below is disproportionate with the admitted income of the respondent. The learned counsel urged for enhancing the quantum of maintenance allowance.

6. Going by the impugned judgment, it could be seen that the court below rightly framed the issue whether the spouses agreed to live separately by mutual consent under Ext.B1 Udampady dated 20/8/2005. According to the petitioner, Ext.B1 is a single sheet of paper containing two pages of which she admits execution on second page only. She contends that the first page is a manipulated one. Going by Ext.B1 it is seen executed in the presence of five witnesses. But none of them were examined to prove the genuineness of the said agreement. But going by the judgment it is seen that since the Judge himself had decided O.P (OS) No.422 of 2008 and O.P(HMA) No.949 of 2006, he arrived at a finding that Ext.B1 agreement is a valid one which was executed by the petitioner and the respondent on mutual consent. But it is interesting to note that either the certified copy of the said judgments or the deposition of the petitioner admitting the validity of the agreement was not produced in evidence in the instant case. The learned Judge went wrong by placing reliance on his own personal knowledge only. The learned counsel for the respondent submits that in all the cases evidence was taken on the same day by the same Judge and the judgments in all the cases were pronounced on the same day. But those cases were not tried jointly. Unless and until the said judgments or the relevant

depositions of the witnesses are produced and marked in the instant case, no reliance can be placed on the evidence let in in other original petitions. Therefore, it cannot be held that Ext.B1 agreement stands proved. It follows that there is no evidence to show that the petitioner is living separately by mutual consent. In this analysis, I find that the petitioner is entitled to get maintenance allowance from the respondent under Section 125 of the Cr.P.C.

7. The next question to be considered is whether the quantum of maintenance allowance determined by the court below is correct and proportionate with the income of the respondent and whether the petitioner is entitled to get enhanced maintenance allowance.

8. It is the case of the petitioner that she has no job or income and she is unable to maintain herself, whereas the respondent is having a bank deposit of Rs.35 lakhs and landed property. Though the respondent contended that the petitioner is a Beautician and she is getting Rs.8,000/- per mensem from her profession, he could not adduce any evidence to substantiate the said contention. So it can safely be concluded that the petitioner is unable to maintain herself. Though the petitioner contended that the respondent is having a bank deposit of Rs.35 lakhs, she also

failed to adduce any evidence to substantiate the said contention. But when the respondent was examined in evidence, he himself admitted that he is having a bank deposit of Rs.5.5 lakhs and got 25 cents of property in his name. His version of income, as regards his deposit and landed property, can be taken as his admitted income. The petitioner, as the legally wedded wife of the respondent, is entitled to get maintenance allowance from the respondent in accordance with her living status and day-to-day expenses for her livelihood. When it has come out in evidence that the respondent has a bank deposit of Rs.5.5 lakhs, the quantum of maintenance allowance determined @ Rs.1,000/- per month is inadequate and disproportionate with the said admitted income. Having regard to the status of both parties and the admitted income of the respondent, the respondent is directed to pay maintenance allowance @ Rs.2,000/- from the date of decree of dissolution of marriage.

9. The learned counsel for the respondent urged for some time to pay the arrear. Having regard to the entire facts and circumstances of the case, the respondent is given six months time to pay the entire arrear provided that half of the entire arrear shall be paid within three months from today and the balance shall be paid within the next three months. It is made clear that in the

event of failure to pay the first instalment within the stipulated time, this instalment facility will automatically stand vacated and the petitioner will be at liberty to realise the entire amount in lump sum.

In the result, R.P(FC). No.391 of 2010 will stand allowed and R.P(FC). No.409 of 2010 will stand dismissed.

Sd/–
(K.HARILAL, JUDGE)

okb.