

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

RPFC.No.11 of 2011 ()

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AGAINST THE JUDGMENT IN MC 298/2008 of FAMILY COURT, NEDUMANGAD
DATED 30-10-2010
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PETITIONER/COUNTER PETITIONER :

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M.HARIKUMAR, AGED 41 YEARS,
S/O.MONY ACHARY, RESIDING AT "GOKULAM"
NEAR EXCISE RANGE OFFICE, KATATAICODE ROAD
KATTAKKADA.**

**BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.ROSHEN.D.ALEXANDER
SMT.JNDU SUSAN JACOB**

RESPONDENT(S)/PETITIONER :

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SANTHI C.V., AGED 45 YEARS,
T.C.55/1905, "JAYASREE NILAYAM", VISWAMBARAN ROAD
PAPPANAMCODE, THIRUVANANTHAPURAM-18.**

**BY ADV. SRI.G.P.SHINOD
ADV. SRI.RAM MOHAN.G.**

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

K.HARILAL, J

R.P.(FC).No.11 of 2011

Dated this the 25th day of March, 2015

ORDER

The petitioner is the respondent in M.C.No.298 of 2008 on the files of the Family Court, Nedumangad. The above M.C. was filed by the respondent herein, who is the wife of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure from the petitioner. According to the averments in the above maintenance case, the respondent is the wife of the petitioner and their marriage was solemnized on 27.5.2007 and after the marriage, they were cohabited together at the house of the petitioner. After sometime, the petitioner deserted the respondent and left her at her parental house on 10.10.2007. It is also contended that, during the short span of matrimonial life, she was subjected to cruelty and harassment by the petitioner and his family members. He refused to pay maintenance allowance from 10.10.2007 onwards. According to the respondent, the petitioner is an Engineer by profession,

drawing a monthly salary of Rs.14,000/- and having an additional income from his jewellery shop. Whereas, the respondent has no job or any sources of income and she is unable to maintain herself. She claimed an amount of Rs.5,000/- per month.

2. The petitioner filed a counter statement, admitting the marriage with the respondent as alleged by her, but he denied other allegations of cruelty and harassment said to have been meted out to her by the petitioner. The petitioner further contented that the respondent was physically incapable of leading a married life and to conceive a child. According to him, he is earning an income of Rs.6,947/- per month only. But the respondent is working as a packer in Hindustan Latex Ltd and earning Rs.4,000/- per month. So she is able enough to maintain herself. After considering the rival pleas, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.2,500/- per month. The legality of the entitlement of maintenance allowance and the correctness of the quantum of maintenance allowance

fixed by the court below are under challenge in this revision petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent *in extenso*. Both the counsel advanced arguments in support of their respective pleas.

4. In view of the submissions at the bar, the short question that arises for consideration is, whether the respondent is entitled to get maintenance allowance as referred above. The marital status of the respondent is not disputed. According to the respondent, they cohabited together from 27.5.2007 to 10.10.2007 only. Even during the said short span of time, according to the respondent, she was subjected to cruelty and harassment by the petitioner and other family members. She raised an allegation of sexual harassment against the brother of the petitioner also. However, the petitioner has no case that he has been maintaining or paying maintenance allowance to the respondent. No evidence has been adduced to show that the petitioner has paid any amount

towards maintenance allowance after 10.10.2007. On the above premises, I do not find any reason to interfere with the entitlement of maintenance allowance found in favour of the respondent.

5. Needless to say that the burden is heavy on the petitioner to prove that the respondent has refused to live with him without sufficient reason. But no evidence has been adduced to substantiate such a contention. There is no illegality or impropriety in the findings whereby, the court below found that the respondent is entitled to get maintenance allowance from the petitioner.

6. What remains to be considered is, whether there is any illegality or impropriety in the determination of the quantum of maintenance allowance. It is the specific case of the respondent that the petitioner is an Engineer by profession and he is getting a monthly salary of 14,000/- per month. The respondent has produced Ext.A3 salary certificate, which shows that the petitioner has been drawing a monthly salary of Rs.7,750/- in the year 2008. As rightly observed by the court below, in the

year 2010, the salary might have enhanced at least to a tune of Rs.10,000/- in view of the trend of inflation and corresponding hike in the salary. The petitioner has a statutory liability to pay maintenance allowance in accordance with the status of his wife and her day-to-day living expenses. Though the petitioner contented that the respondent is working and getting Rs.4,000/- per month, no evidence has been adduced to substantiate the said contention. So it can be concluded that the respondent is not able enough to maintain herself.

7. In the above view of the matter, I am of the opinion that the quantum of maintenance allowance determined at the rate of Rs.2,500/- per month is just and proper, warranting no interference under revisional jurisdiction.

This revision petition is dismissed accordingly.

Sd/-
K.HARILAL
JUDGE

vs