

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

RPFC.No. 72 of 2011 ()

(MC 224/2006 of FAMILY COURT, THIRUVANANTHAPURAM)

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REVISION PETITIONER/RESPONDENT:

UDAYAKUMAR B., S/O.AMBUJAKSHI,
UDAYA BHAVAN, VIKAS NAGAR, VEMBANNOOR,
ARUVIKKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.S.D.ASOKAN

RESPONDENTS/PETITIONERS:

1. SUCHITHRA.S., D/O.SHYLA RAVEENDRAN,
KOLLAMTHARA VEEDU, T.C. 68/2210, THIRUVALLAM VILLAGE,
THIRUVANANTHAPURAM.

2. ADARSH, S/O.SUCHITHRA, AGED 4½ YEARS,
KOLLAMTHARA VEEDU, T.C. 68/2210, THIRUVALLAM VILLAGE,
THIRUVANANTHAPURAM., MINOR REPRESENTED
THROUGH HER MOTHER SUCHITHRA.S.,
D/O.SHYLA RAVEENDRAN, KOLLAMTHARA VEEDU, T.C. 68/2210
THIRUVALLAM VIVILLAGE, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.V.VIJULAL

R1,2 BY ADV. SRI.R.T.PRADEEP

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.72 of 2011

Dated this the 24th day of June, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.224/2006 on the files of the Family Court, Thiruvananthapuram. The above petition was filed under Section 125 of the Code of Criminal Procedure by the respondents herein, who are the wife and son of the revision petitioner, claiming maintenance allowance. According to the first respondent, the revision petitioner has neglected to maintain them and refused to pay maintenance allowance to them. The first respondent has no job or any source of income and she is unable to maintain herself and the second respondent. The revision petitioner is doing building contract work and getting Rs.10,000/-per month.

2. The revision petitioner admitted the marital status of the first respondent and paternity of the

second respondent. But he contended that the first respondent is living separately without reason. So the respondents are not entitled to get maintenance allowance. It is further contended that the quantum claimed for the second respondent is excessive and disproportionate with his income. He denied the allegation of getting Rs.10,000/- as monthly income. After considering the rival pleas and evidence on record, the court below declined to grant maintenance allowance to the first respondent and passed the impugned order directing the revision petitioner to pay maintenance allowance @ Rs.1,500/- to the second respondent alone. The correctness of the quantum fixed by the court below to the second respondent is under challenge in this revision petition.

3. Going by the impugned order, it is seen that the court below denied the claim of the first respondent for maintenance allowance on a finding that she is residing separately without sufficient reason and thereby she failed to perform the marital obligation of a wife. It has come out in evidence that even though

she filed an O.P. seeking restitution of conjugal rights, when the respondent expressed his willingness to live together, she withdrew the said O.P. I do not find any kind of perversity in the appreciation of the evidence from which those findings have been arrived at. But the claim for maintenance allowance to the second respondent was granted as he is the son of the revision petitioner, who is entitled to get maintenance allowance under Section 125 of the Cr.P.C. Since the paternity is not disputed the revision petitioner is liable to pay maintenance allowance to the second respondent.

4. Coming to the quantum of maintenance, the first respondent contended that the revision petitioner is doing contract work and getting Rs.10,000/- per month. But no evidence had been adduced to substantiate the said claim. The revision petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. "Means" provided under Section 125 of the Cr.P.C. signifies not only movable or immovable

property in the shape of salary or rent or agricultural income but also the earning capacity of an able bodied man to earn for livelihood of his family. The second respondent is aged $2\frac{1}{2}$ years only. During the period of infancy, a substantial amount is required for proper care, protection, food and medical attendance of an infant. In the above view, I find that the quantum of maintenance allowance determined by the court below @ Rs.1,500/- per month to the second respondent is just, reasonable and proper, warranting no interference under revisional jurisdiction.

This R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.