

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

RPFC.No. 95 of 2011 ()

AGAINST THE ORDER IN MC 802/2009 of FAMILY COURT, MALAPPURAM
DATED 17-03-2010

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REVISION PETITIONER/RESPONDENT:

MUHAMMED SHAJID KUNHU, KALLUMURIKKAL,
S/O.MUHAMMED, PERASANNUR(PO), KUTTIPPURAM AMSOM
PERASANNUR DESOM, TIRUR TALUK, MALAPPURAM. REP.BY
P/A HOLDER MUHAMMED, S/O.HYDRU, KALLUMURIKKAL HOUSE,
PERASANNUR (PO), KUTTIPPURAM AMSOM,
PERASANNUR DESOM, TIRUR TALUK, MALAPPURAM.

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT(S)/PETITIONERS:

1. RUBEENA KUTTIPARAMBIL,
D/O.SULAIMAN, KUTTIPPURAM, KUTTIPPURAM AMSOM DESOM,
TIRUR TALUK, MALAPPURAM DISTRICT.

2. MUHAMMED ASHFAQ (MINOR) ,
REPRESENTED BY 1ST RESPONDENT MOTHER,
RUBEENA KUTTIPARAMBIL, MALAPPURAM DISTRICT.

R1 & R2 BY ADV. SRI.E.S.M.KABEER

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.95 of 2011

Dated this the 25th day of June, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.802/2009 on the files of the Family Court, Malappuram, filed by the respondents herein, who are the wife and son of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, the revision petitioner deserted the respondents since 9.3.2009. They have no source of income whatsoever and they are incapable to maintain themselves; whereas the revision petitioner is a Civil Engineer employed in Sharjah and drawing a salary of Rs.1,50,000/- per month. That apart, he is getting Rs.5,000/- per month as agricultural income. The respondents claimed Rs.7,000/- and Rs.3,000/- per month respectively as their maintenance allowance.

2. The revision petitioner admitted the marital

status of the first respondent and the paternity of the second respondent, but contended that the first respondent is well educated and she is able enough to maintain herself and the second respondent. He is not a Civil Engineer as alleged by the first respondent and he is not getting Rs.1,50,000/- as salary. He is getting a salary of 1100 Dirhams only. Further, he contended that even after 9/3/2009 he used to give maintenance to his wife and son. After considering the rival pleas and the evidence let in by both parties the court below directed the revision petitioner to pay maintenance allowance @ Rs.5,000/- to the first respondent and Rs.1,000/- to the second respondent as monthly maintenance. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. Shri.Jamsheed Hafiz, the learned counsel for the revision petitioner, vehemently advanced arguments assailing the findings of the court below whereby the revision petitioner was directed to pay

maintenance allowance as specified above. The learned counsel contends that the court below miserably failed to appreciate Ext.B6 in its correct perspective and the court below ought to have found that the first respondent is able enough to maintain herself and the second respondent and the revision petitioner has no earnings as claimed by the first respondent.

4. Per contra, Shri.E.S.M. Kabeer, the learned counsel for the respondents advanced arguments to justify the impugned order. According to him, the court below has rightly appreciated the evidence on record and directed the revision petitioner to pay maintenance allowance.

5. Going by the impugned order, it is seen that the marital status as well as the paternity are admitted. Though the revision petitioner has contended that the first respondent is well educated and able enough to maintain herself, no evidence had been adduced to substantiate the said contention. Therefore, the court below can be justified in finding that the first respondent is not able enough to maintain herself and

the second respondent. The learned counsel for the revision petitioner mainly relied on Ext.B6 which would show that the revision petitioner is having basic salary of 1100 Dirhams only. If the said salary certificate is taken at its face value and accepted as such, the corresponding Indian currency would come to Rs.13,500/- per month. It is pertinent to note that Ext.B6 salary certificate is issued by an employer in a foreign country. On perusal of the same, it could be seen that the revision petitioner is working in a private firm. I am of the opinion that no sanctity or authenticity can be attached to this certificate unless it is attested by the Indian Embassy or the person who issued the certificate was examined in evidence in accordance with the provisions of the Indian Evidence Act. Therefore, the court below is fully justified in discarding Ext.B6 salary certificate.

6. The revision petitioner himself admitted that he is a Diploma Holder in Civil Engineering and he is working in Sharjah. He is the holder of UAE driving licence and even now he is continuing in Gulf.

However, from the available evidence on record, it could be reasonably presumed that the revision petitioner is a person having sufficient means to pay maintenance to his wife and children. Even if the admitted income of Rs.13,500/- is taken at its face value, I am of the opinion that the direction to pay Rs.5,000/- to the first respondent and Rs.1,000/- to the second respondent towards maintenance allowance is not excessive, but proportionate with his admitted income. In the above view, the quantum of maintenance allowance determined by the court below is just and reasonable and no interference is called for under revisional jurisdiction.

This R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.