

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

RPFC.No. 135 of 2011 ()

MC 498/2010 of FAMILY COURT, MALAPPURAM DATED 11-02-2011

REVISION PETITIONER/RESPONDENT:

MOHAMMED HANEEFA, REP. BY KAMALI HAJI,
POWER OF ATTORNEY HOLDER S/O.CHEKKUTTY HAJI
MULLAPALLY HOUSE, KURUVA AMSOM, PAZHAMALLUR DESOM
PAZHAVALLUR POST, PERINTHALMANNA TALUK
MALAPPURAM DISTRICT.

BY ADVS.SMT.SAIRA PHIROZ
SMT.SHYLA SHAFFEQ

RESPONDENT(S) /RESPONDENTS:

1. RAHEENA, AGED 28 YEARS, D/O.KUNNALI,
POORIMANIL PATTIYIL HOUSE, KOOTILANGADI AMSOM
PARADY DESOM, RESIDING AT PARADIYIL.P.O
KOOTILANGADI POST, PERINTHALMANNA TALUK
MALAPPURAM DISTRICT - 676 506.

2. JUHANA SHERIN, AGED 11 YEARS (MINOR), D/o.RAHEENA
POORIMANIL PATTIYIL HOUSE, KOOTILANGADI AMSOM
PARADY DESOM, RESIDING AT PARADIYIL.P.O
KOOTILANGADI POST, PERINTHALMANNA TALUK
MALAPPURAM DISTRICT - 676 506.

3. MOHAMMED IJALAL, AGED 6 YEARS,
S/O.RAHEENA, POORIMANIL PATTIYIL HOUSE
KOOTILANGADI AMSOM PARADY DESOM, RESIDING AT
PARADIYIL.P.O, KOOTILANGADI.POST, PERINTHALMANNA
TALUK, MALAPPURAM DISTRICT - 676 506.

(Minor respondents are represented by their guardian mother
1st respondent)

R1 to 3 BY ADV. SRI.P.SAMSUDIN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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R.P (F.C) No.135 of 2011

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Dated this the 13th day of July, 2015

ORDER

The correctness of the quantum of maintenance allowance determined by the Family Court, Malappuram in M.C.No.498/2010 is challenged in this revision petition by the petitioner, who is the father of respondents 2 and 3. The above M.C was filed by respondents 2 and 3 herein, under Section 125 of the Code of Criminal Procedure, claiming maintenance allowance. The 2nd respondent is aged 11 years and 3rd respondent is aged 7 years. They are studying in English medium school and also attending Madrassa. The minor children have no sources of income whatsoever. They are residing with the mother and the father left away leaving company of the respondents. They claimed maintenance allowance @₹5,000/- to the 2nd respondent and ₹4,000/- to the 3rd respondent.

2. The petitioner admitted the paternity of the respondents 2 and 3. But, he denied the allegation that he is conducting a supermarket abroad with income of ₹ 75,000/- per month. According to him, he has no job in gulf and he is wandering there without any income. After considering the objection filed by the petitioner through his power of attorney holder, the court below directed him to pay maintenance allowance @ ₹2,500/- to the 2nd respondent and ₹2,000/- to the 3rd respondent from the date of filing the M.C.

3. The liability of the father to pay maintenance allowance to the children is not a disputed question. Here, the paternity of the children is also not disputed. Admittedly, the petitioner has re-married recently and he has a new born baby in the second wife. It has come out in evidence that the respondents are studying in English medium school and also attending Madrassa.

4. The paternal grandfather of the respondents 2 and

3 were examined for the petitioner and he admitted himself in the witness box that his son, the petitioner is doing his own business in Saudi Arabia. Moreover, I am unable to believe his case that he is wandering in gulf country without any income. The petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. He could not mount the witness box so as to give evidence as regards his income. Therefore, an adverse inference can be drawn against the petitioner under Section 114(g) of the Indian Evidence Act as regards his income. Moreover, the fact that he has contracted a second marriage recently indicates his confidence in his earning capacity to maintain two families at a time. The father is liable to pay maintenance allowance to his children in accordance with their living status, standard of life and day to day needs. A substantial amount is required to meet the educational expenses of the children. Moreover, the children have the right to live with the standard of life as

that of their father who is earning in gulf country for the last so many years. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below is reasonable, just and proper and no interference is called for under revisional jurisdiction.

The revision petition is dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge