

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. 137 of 2011 ()

MC 445/2008 of FAMILY COURT, KANNUR DATED 31-03-2011

REVISION PETITIONER/COUNTER PETITIONER:

T.C.SUDHEER BABU, S/O.KARUNAKARAN,
AGED 48 YEARS, 'CHANDANA VEEDU', PATHIRAPARAMBA
ELAYAVOOR AMSOM, P.O.CHOVVA, KANNUR DIST.

BY ADV. SRI.C.K.SREEJITH

RESPONDENT(S)/PETITIONERS:

1. A.M.VINEETHA, W/O.SUDHEER BABU,
ALAKKAL HOUSE, NEAR PUZHATHI HIGH SCHOOL, P.O.KOTTALI
KANNUR DIST - 670016.

2. VIGNESH BABU, S/O.SUDHEER BABU,
AGED 11 YEARS, (MINOR), RESIDING AT ALAKKAL HOUSE
NEAR PUZHATHI HIGH SCHOOL, P.O.KOTTALI
KANNUR DIST - 670016.

3. VYSHNAVI BABU, D/O.SUDHEER BABU,
AGED 10 YEARS (MINOR), RESIDING AT ALAKKAL HOUSE
NEAR PUZHATHI HIGH SCHOOL, P.O.KOTTALI
KANNUR DIST - 670016.

R1-3 BY ADVS. SMT.T.D.RAJALAKSHMI
SRI.R.SREEHARI

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.137 of 2011

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Dated this the 13th day of July, 2015

ORDER

The petitioner is the respondent in M.C.No.445/2008 on the files of the Family Court, Kannur, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, the petitioner has neglected to maintain them and refused to pay maintenance allowance since June, 2008. The 1st respondent is a casual labourer and getting ₹60/- per day only and she is unable to maintain herself and the respondents 2 and 3; whereas the petitioner is a businessman and earning an amount of ₹50,000/- per month. He has sufficient means to provide maintenance allowance to the respondents. But, now, the respondents are depending upon the brother of the 1st respondent for

their livelihood.

2. The petitioner admitted the relationship; but he contended that the 1st respondent is residing separately without sufficient reasons. He denied the allegation that he is getting ₹50,000/- per month. But, according to him, he is an autorikshaw driver and getting a meagre income per day. After considering the rival pleas and the evidence let in by both parties, the court below directed the petitioner to pay maintenance allowance @ ₹1,500/- each per month to the respondents. The legality of the entitlement of maintenance allowance and correctness of the quantum are under challenge in this revision petition .

3. Heard the learned counsel for the petitioner.

4. The marital status of the 1st respondent and the paternity of the respondents 2 and 3 are not disputed. It is the specific case of the respondents that the petitioner has not paid any amount towards maintenance after 2008. No evidence was forthcoming contrary to the said case of the respondents. In that context, the court below is justified in finding that the respondents are entitled to get maintenance

allowance from the petitioner.

5. Coming to the quantum of maintenance allowance, the petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. He himself admitted that he is an autorikshaw driver by profession. If that be so, it could be reasonably presumed that he is getting a reasonable income to maintain his family consists of two children. The respondents 2 and 3 are minor children, aged 8 and 7 years respectively and they are school going students. A substantial amount is required to meet the educational expenses of the children. Though the 1st respondent admitted that she is doing a casual work and getting a meagre amount per day, the said amount is not sufficient to meet the expenses of her family consisting of three members, of whom, two are the students studying in different classes. Moreover, primarily, the liability to maintain the children is on the father, though the mother is also having some income. The husband is liable to pay maintenance allowance to his wife and children in

accordance with their living status, standard of life and their day to day needs. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below @ ₹1,500/- each per month to the respondents is not excessive and no interference is called for under revisional jurisdiction.

6. Having regard to the facts and circumstances of the case, the revision petitioner is given five months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of three months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

The revision petition is dismissed.

Sd/-

K.HARILAL, JUDGE.

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P.A to Judge