

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

RPFC.No. 179 of 2011 ()

AGAINST THE ORDER IN MC 284/2009 of FAMILY COURT, KANNUR DATED
24-06-2011

REVISION PETITIONER/COUNTER PETITIONER:

NAMEER T.P,S/O.K.K.L.HAMSA,
'JAMEELAS', PALLIKUNNUMBRAM, VALAPATTANAM P.O
KANNUR DISTRICT.

BY ADV. SRI.V.C.JAMES

RESPONDENTS/STATE:

1. RAJEENA C.K,D/O.MUSTHAF A,AGED 30 YEARS,
C.K HOUSE, ARAYAKANDI PARAMBA, AZHIKODE SOUTH
AZHIKODE P.O, KANNUR DISTRICT 675 012.
2. NABEEL,S/O.NAMEER T.P,AGED 3 1/2 YEARS,
C.K HOUSE, ARAYAKANDI PARAMBA, AZHIKODE SOUTH
AZHIKODE P.O, KANNUR DISTRICT 675 012.
3. STATE OF KERALA
REPRESENTED BY THE D1, CB CID, SIG -II
ERNAKULAM 682 016.

R1,2 BY ADV. SRI.C.K.SREEJITH
R1,2 BY ADV. SRI.P.BENNY JOSEPH
R3 BY PUBLIC PROSECUTOR: SRI.JUSTINE JACOB

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 23-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HARILAL, J.

R.P.(F.C) No. 179 of 2011

Dated this the 23rd day of July, 2015

ORDER

The revision petitioner is the respondent in MC No.284/2009 on the files of the Family Court, Kannur. He is the husband of the 1st respondent as well as the father of the 2nd respondent, who is a minor aged three and a half years.

2. According to the 1st respondent, their marriage was solemnized in the year 2002; but the petitioner neglected to maintain them and refused to pay maintenance allowance since 26/05/2008. The 1st respondent has no job or any source of income and she is unable to maintain herself and the 2nd respondent; whereas the petitioner is conducting a business in Gulf and he is earning a sum of Rs.1,00,000/- per month. The respondents 1 and 2 claimed maintenance allowance at the rate of Rs.5,000/- per month and Rs.2,500/- per month

respectively.

3. The petitioner admitted the relationship between the parties, as such; but he contended that he is working as a driver in Saudi Arabia and he is not getting Rs.1,00,000/- as claimed by the 1st respondent and getting only an amount of Rs.9,600/- per month. It is contended that the 1st respondent is earning an amount of Rs.50,000/- per month from her LIC Agency business. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.3,000/- to the 1st respondent and Rs.2,000/- to the 2nd respondent. The legality of correctness of the quantum of maintenance determined by the court below is under challenge in this revision petition.

4. Heard.

5. Going by the impugned order, it is seen that the marital status of the 1st respondent and the paternity

of the 2nd respondent are not disputed. The petitioner has no case that he has been looking after the respondents 1 and 2 after 2008, contrary to the allegations made against him. In the absence of such a case and evidence thereon, the court below is justified in finding that the respondents 1 and 2 are entitled to get maintenance allowance.

6. Coming to the correctness of the quantum of maintenance allowance, even though the petitioner contended that the 1st respondent is working as an LIC agent and getting more than Rs.50,000/- per month, he has miserably failed to substantiate the said contention by adducing evidence. Therefore, it could be held that the 1st respondent has no job or any source of income and she is unable to maintain herself and the 2nd respondent. The petitioner has no case that he is physically disabled or unhealthy, so as to earn for the livelihood for his wife and the only child. The term

'Means' signifies not only movable or immovable properties; but also the earning capacity of a physically able bodied man. Admittedly, the petitioner is a driver by profession and working in Saudi Arabia. Therefore, it could be reasonably presumed that he has sufficient means to pay maintenance allowance to his wife and the only child in accordance with their family status, standard of life and day-to-day requirements.

7. In this view of the matter, I find that the quantum of maintenance allowance determined by the court below does not warrant any interference under the revisional jurisdiction.

Hence this RP(FC) is dismissed.

Sd/-
K.HARILAL
JUDGE

RSR

//True Copy//

PA to Judge