

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

RPFC.No. 183 of 2011 ()

MC 130/2010 of FAMILY COURT, MALAPPURAM
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REVISION PETITIONER(S)/RESPONDENT:

**ABDUL LATHEEF, 45 YEARS OF AGE,
S/O.ULLADAN MUHAMMED, KOORIYADU.P.O, TIRURANGADI TALUK,
MALAPPURAM DISTRICT, VENGARA PSL.**

**BY ADVS.SRI.SHIRAZ ABDULLA M.S.
SRI.JOJO PAPPACHAN**

RESPONDENT(S)/PETITIONER:

**PALERI PATHUMAKKUTTY, 40 YEARS OF AGE,
D/O.PALERI MUHAMMED KUTTY, THIRURANGADI TALUK,
VENGARA AMSOM, KUTTUR DESOM, MALAPPURAM DISTRICT,
VENGARA PSL.**

BY ADV. SRI.C.M.MOHAMMED IQBAL

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 30-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.183 of 2011

Dated this the 30th day of March, 2015.

O R D E R

The revision petitioner is the respondent in M.C. No.130/2010 on the files of the Family Court, Malappuram. The above M.C. was filed by the respondent herein, who is the wife of the petitioner, under Section 125 of the Code of Criminal Procedure claiming maintenance allowance from the revision petitioner. According to the respondent, the marriage was solemnised on 28.4.1986 and three children were born in that wedlock. It is her specific case that the revision petitioner is working in Saudi Arabia as a driver for the last so many years. But he has been neglecting to maintain the respondents from 8.1.2004 onwards and refusing to pay maintenance allowance to them. According to the respondent, she has no job or any sources of income. But the petitioner is getting Rs.30,000/- per month towards salary. He is also getting Rs.10,000/- from family property. She claimed an amount of Rs.5,000/- as monthly maintenance allowance.

2. The revision petitioner filed a counter statement admitting the marital status of the respondent and the paternity of the

children. But he denied the allegation that he has been neglecting to pay maintenance allowance to them. According to the revision petitioner, the amount claimed as maintenance allowance is exorbitant. It is also contended that the respondent has been working as a housemaid and she is getting Rs.150/- per day. Therefore, she is able enough to maintain and thereby the petitioner is not liable to pay maintenance allowance to the respondent.

3. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance @ Rs.3,000/- per month. The legality of the entitlement to get maintenance allowance and the correctness of the quantum determined by the court below are under challenge in this revision petition.

4. The learned counsel for the revision petitioner as well as the respondent advanced arguments in support of their respective contentions. According to the learned counsel for the revision petitioner, the respondent has failed to show sufficient reasons to claim maintenance allowance without forfeiting her right of maintenance. It is also contended that the quantum determined as monthly maintenance allowance is excessive and disproportionate with the income of the revision petitioner.

5. The question to be considered is whether there is any illegality or impropriety in the findings whereby the court below directed the petitioner to pay maintenance allowance at the rate of Rs.3,000/- per month.

6. The marital status of the respondent as well as the paternity of the children are not disputed. Though the petitioner contended that he has pronounced Talak, the court below found that it is a false story and there is no evidence to show payment of Iddath expenses and Mathah. It has come out in evidence that he was employed in Gulf for a long period and no amount had been paid to the respondent towards maintenance after 2007. In such circumstance, there is no illegality in the finding that the respondent is entitled to get maintenance allowance from the petitioner.

7. What remains to be considered is can the court below be justified in fixing the quantum of maintenance. As has been held above, it has come out in evidence that he was employed in Gulf for a long period and according to him, he was employed as a driver in Saudi Arabia. He has no case that he is unhealthy or physically disabled to work as a driver. Thus, indisputably, he has sufficient earning capacity. While the marriage with the respondent is subsisting, he again married a Srilankan lady and he

is residing with her. This conduct itself shows that he is confident of his financial capacity to pay maintenance allowance to two wives at a time. Even though his personal law permits him to marry more than once, he has the liability to pay maintenance to both wives equally. Thus, the first wife is entitled to get maintenance allowance on par with that of the second wife. The petitioner has the liability to pay maintenance allowance in accordance with the status and day-to-day requirements of the respondent. In this analysis, the quantum of maintenance allowance fixed by the court below is just and proper, warranting no interference under revisional jurisdiction.

8. The learned counsel urged for granting some time to pay the arrear. Having regard to the facts and circumstances of the case, four months time is granted to pay the arrear, provided half of the arrear shall be paid within two months and remaining half shall be paid within next two months. In the event of default in paying the first instalment, the respondent is allowed to realise the entire arrear in lump sum.

This revision petition is dismissed accordingly.

Sd/-
(K.HARILAL, JUDGE)

okb.