

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

RPFC.No. 97 of 2013 ()

MC 16/2012 of FAMILY COURT, KASARAGOD

REVISION PETITIONERS/PETITIONERS:

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1. AYISHA, AGED 27 YEARS
D/O.MOHAMMED SOOFI.
 2. MOHAMMED RAMEES SUSHAD (MINOR)
REPRESENTED BY 1ST PETITIONER AS GUARDIAN (MOTHER).
BOTH ARE R/AT BADAR HOUSE
AMBAR HAJI, F.M.ROAD, ADKA
KUBANOOR VILLAGE, POST MANGALPADY
KASARAGOD TALUK & DISTRICT.

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON

RESPONDENT/(RESPONDENT0:

ABDULRAHIMAN, AGED 35 YEARS
S/O.LATE YUSUF, R/AT PAYYALKARA HOUSE
MAIRE VILLAGE AND POST, KASARAGOD TALUK-671552.

BY ADV. SRI.S.SREEKUMAR (SR.)
BY ADV. SRI.P.MARTIN JOSE
BY ADV. SRI.P.PRIJITH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

R.P.(F.C.) No.97 of 2013

Dated this the 19th day of November 2015

O R D E R

The revision petitioners are the petitioners in M.C. No.16 of 2012 on the files of the Family Court, Kasaragod. The court below dismissed M.C. No.16 of 2012, filed by the revision petitioners under Section 125(1) of the Code, for maintenance. Aggrieved by the said order, this revision petition has been filed.

2. Heard both sides.

3. One of the reasons stated by the court below to dismiss the claim of the revision petitioners is that there was no sufficient justification for the revision petitioners in

living separately from the respondent. The court below came to the said conclusion from the evidence of PW1 and RW1. It has been contended in the memorandum of revision petition that the court below in O.P. No.376 of 2011, filed by the respondent for restitution of conjugal rights, held that there was sufficient justification for the first revision petitioner in living separately from the respondent. However, the said document was not produced before the court below. No evidence was also adduced in this regard. In the said circumstances, the learned counsel has prayed for granting one more opportunity to the revision petitioners to adduce further evidence. Having gone through the relevant inputs in the light of the submission of the learned counsel for the revision petitioners, I am of the view that one more opportunity can

be granted to the revision petitioners to substantiate their contentions.

4. The second ground to deny the maintenance to the revision petitioners was that the respondent was not having any job or source of income as he is suffering from cancer. Ext.B1 is the only document produced to show that the respondent is suffering from cancer. Ext.B1 is of the year 2007. The learned counsel for the respondent has submitted that there are documents to prove that the respondent is undergoing treatment for cancer even now and that he is not able to do any job. Considering the submission of the learned counsel for the respondent, I am of the view that one more opportunity can be granted to the respondent to prove the case of the respondent.

In the result, this revision petition stands allowed, setting aside the order impugned and the matter is remitted to the court below, for fresh consideration of the matter in accordance with law, affording reasonable opportunity to both sides to adduce evidence. This being a case of the year 2012, the court below is directed to dispose of the case as expeditiously as possible.

I make it clear that I have not made any observation with regard to the merits of the case and the observations made in this order are only for the purpose of disposing of this petition.

The parties shall appear before the Court below on 15.12.2015.

Sd/-
B.SUDHEENDRA KUMAR,
JUDGE

dl/20.11.2015