

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

RPFC.No. 108 of 2013 ()

AGAINST THE ORDER IN MC 212/2011 of FAMILY COURT, VADAKARA
DATED 11-01-2013

REVISION PETITIONER(S)/PETITIONER/RESPONDENT:

PREMAN, AGED 41 YEARS
S/O.NARAYANAN NAIR, KELOTHKANDI HOUSE
EARAVATTUR P.O., PERAMBRA VIA, QUILANDYTALUK.

BY ADV. SRI.ZUBAIR PULIKKOOL

RESPONDENTS/RESPONDENTS:

1. SHEEJA, AGED 37 YEARS,
D/O.BALAKRISHNAN NAIR
THEKKENEELIYATH HOUSE, PALLIKKARA POST,
PAYYOLI, QUILANDY , PIN 673 525
2. SREEDHARI, AGED 9 YEARS, (2ND RESPONDENT IS THE MINOR
REP. BY ITS RESPONDENT AS GUARDIAN/MOTHER)

R1 & 2 BY ADVS. SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SRI.K.K.ANIL KUMAR
SRI.BABU THOMAS (PAZHAYATHOTTATHIL)
SMT.N.K.SHEEBA
SMT.T.N.LEKSHMI SHANKAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
10-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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C.T.RAVIKUMAR, J

R.P(F.C) No. 108 of 2013

Dated this the 10th day of March, 2015

ORDER

This revision petition is directed against the order in M.C.No.212/2011 dated 11.1.2013 of Family Court, Vatakara. The respondents herein are respectively the wife and son of the revisionist and they filed M.C.No.212/2011 under section 125 of the Code of Criminal Procedure seeking maintenance from the revision petitioner. It is filed contending that the revision petitioner is capable of maintaining them and he neglects to maintain them. It is contended by them that the revision petitioner is a collection agent in Perambra Regional Co-operative Bank and he is also getting an income by taking classes in a parallel college. The revision petitioner entered appearance and resisted the claim of the respondents. Evidently, he took up the contentions that the first respondent is refusing to live with him without any sufficient cause and that he is not getting ₹13,000/- as income as alleged by the first respondent. He denied the allegation that he is taking classes and getting income from a parallel college. The first respondent was examined as PW1

and on her side Exts.A1 to A5(a) were marked. The revision petitioner got himself examined as RW1 but no documentary evidence was adduced on his side. After evaluation of the evidence on record as mentioned above, the family court found that the revision petitioner is liable to maintain the respondents and consequently fixed ₹3,000/- and ₹2,000/- as monthly maintenance payable respectively to the first and second respondent. This revision petitioner is filed against the said order.

2. I have heard the learned counsel for the revision petitioner and also the learned counsel for the respondents.

3. At the out set it is to be noted that the revision petitioner did not dispute the factum of his marriage with the first respondent and also the paternity of the second respondent. In such circumstances, to get himself absolved of the liability to maintain the first respondent the revision petitioner has either to show that the first respondent is able to maintain herself or that she has incurred disqualification under any of the grounds mentioned under section 125(4) of the Cr.P.C. No evidence was adduced by the revision petitioner to establish that the first respondent is able to maintain herself. Though the revision petitioner has taken up a contention that the first respondent is refusing to live with him

without any sufficient cause the petitioner has not succeeded in establishing the same. The Family Court, on appreciation of the evidence tendered by the first respondent as PW1 and documentary evidence adduced on her side as also the evidence of the revision petitioner as DW1 arrived at the conclusion that the first respondent is residing separately with sufficient reason. The evidence of PW1 would reveal that she took up the contention that the revision petitioner deserted herself and second respondent. It is true that the revision petitioner herein has earlier filed a petition for restitution of conjugal rights. The learned counsel for the revision petitioner would submit that subsequently that petition was dismissed and the matter was not pursued thereafter. In such circumstances, the family court cannot be found fault with in arriving at the conclusion that the first respondent is refusing to live with the petitioner without a sufficient reason. When that aforementioned facts discussed in the order of the Family Court are admittedly, true to evidence on record I am of the view that the family court is justified in arriving at the conclusion that the revision petitioner is liable to maintain the first respondent. As noticed hereinbefore, the second respondent is the daughter born in the wedlock. The petitioner did not dispute the paternity of the second respondent. She is a minor. Admittedly, she is now residing

along with the first respondent. In such circumstances, the order of the family court finding that the revision petitioner is liable to pay monthly maintenance to the second respondent also cannot be said to be illegal warranting any interference. Now, the question to be decided is whether the direction to pay ₹3,000/- as monthly maintenance to the first respondent and the direction to pay ₹ 2,000/- as monthly maintenance to the second respondent invite interference in exercise of the revisional jurisdiction. There cannot be any doubt with respect to the fact that while fixing the monthly maintenance the capacity and capability of the respondent-husband has to be taken into account. In this case, the petitioner did not dispute the fact that he is working as a collection agent of Perambra Regional Co-operative Bank. However, his case that he is only getting ₹3,000/-. There is no contra evidence with respect to the income deriving from the said source. The revision petitioner has disputed the fact that he is functioning as a teacher in parallel college. Admittedly, no evidence was adduced by the respondents herein to show that the petitioner is working as a teacher in a parallel college. But, at the same time, it is the fact that he is working as a collection agent and there is no case for the revision petitioner that he is not an able bodied person. The family court

virtually, took his monthly income as ₹10,000/- per month. Even if the revision petitioner is not working as a teacher in the parallel college, in the absence of any evidence to show the contrary he is to be treated as an able bodied person considering the fact that he is now, aged only 45 years. In such circumstances, I do not find any unreasonableness in the matter of fixation of his monthly income as ₹10,000/- for the purpose of deciding the quantum of maintenance payable by him to the respondent. But, the question is even if the quantum of monthly income of the revision petitioner is taken as ₹ 10,000/-whether the family court is justified in passing an order as aforesaid. As a result of the order the petitioner has to pay half the amount of his income by way of monthly maintenance. The second respondent is the daughter born in the wedlock of the petitioner with the first respondent. She is now aged about 12 years. She is a school going student. In such circumstances, I do not find any reason to interfere with the fixation of the quantum of monthly maintenance payable to her by the revision petitioner viz., ₹2,000/-. Taking into account the fact that monthly income of the revision petitioner was fixed only at ₹10,000/- by the family court I am of the view that the order to pay an amount of ₹3,000/- to the first respondent in addition to the payment of ₹2,000/- to the second

respondent invites interference. This is because the amount of monthly maintenance has to be fixed taking into account the ability and capacity of the person from whom it is sought for. Taking into account all the circumstances I am of the view that the amount of monthly maintenance which is fixed as ₹3,000/- is liable to be reduced to ₹2,000/-. In the result upholding the findings of the family court that the revision petitioner is liable to maintain the respondents, the amount of monthly maintenance payable to the second respondent is maintained and the monthly maintenance ordered to be paid to the first respondent is reduced to ₹2,000/- per month. There is no reason to interfere with the order of the Family Court directing the petitioner to pay maintenance from 26.11.2011, the date of filing the petition and also allowing the first petitioner to collect/realise the maintenance payable to the second petitioner. This revision petition is thus allowed in part to the above extent.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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