

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

RPFC.No. 117 of 2013 ()

AGAINST THE ORDER IN MC 35/2011 of FAMILY COURT, PALAKKAD
DATED 17-11-2012

REVISION PETITIONER(S)/PETITIONER:

PADMINI AGED 27 YEARS
W/O.RAMESH, KUNDUMARIL PURA VEEDU, KOTTAE KATTU KUNNU
THENUR POST, PALAKKAD-678612.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S)/COUNTER PETITIONER:

RAMESH, AGED 36 YEARS
S/O.THANKAPPAN, S.N.NAGAR, MALAMPUZHA
PALAKKAD-678651.

BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL)

THIS REV.PETITION (FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 16-11-2015, ALONG WITH RPFC NO. 29/2013 THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

B. SUDHEENDRA KUMAR, J.

.....
R.P.(FC) Nos. 29 & 117 of 2013
.....

Dated this the 16th day of November, 2015

ORDER

The revision petitioner in RP (FC) No. 29 of 2013 is the counter petitioner and the revision petitioner in RP(FC) 117/2013 is the first petitioner in MC No. 35 of 2011 on the files of the Family Court, Palakkad.

2. The Court below directed the revision petitioner in R (FC) No. 29 of 2013 to pay Rs. 3,000/- each per month to respondent Nos. 2 and 3 in RP (FC) 29 of 2013. However, the court below dismissed the claim of the revision petitioner in RP (FC) 117/2013 for maintenance. Aggrieved by the dismissal of the claim, the first petitioner in MC. No. 35 of 2011 before the court below has filed RP (FC) No. 117/2013 and challenging the quantum of maintenance ordered by the court below, the counter petitioner before the court below has filed RP(FC) 29 of 2013.

3. Heard both sides.

4. For the sake of convenience, the parties are referred to in this order as per their status before the court below.

5. The first petitioner claimed maintenance from the counter petitioner stating that she was deserted by the counter petitioner from 15-4-2009 onwards. However, the first petitioner did not mention any reason for her to leave the company of the counter petitioner. No circumstance was also brought out in evidence to show that there was any neglect on the part of the counter petitioner. The court below found that the first petitioner was educationally and financially on a higher pedestal than the counter petitioner. The counter petitioner is a loading and unloading worker in Milma.

6. PW1 and PW2 were examined and Ext. P1 was marked for the petitioners. CPW1 was examined and Ext. X1 was marked for the counter petitioner.

7. The court below, after evaluating the oral evidence of PW1 and PW2 came to the conclusion that the circumstance which compelled the first petitioner to leave the matrimonial home is not proved. In the absence of any pleading and proof regarding the reason for separate residence by the first petitioner, the court below rightly refused to grant maintenance to the first petitioner. The evidence of CPW1 coupled with Ext. X1 would show that the counter petitioner received a total pay of Rs. 2,19,461/- for the period from June 2011 to March 2012. The average salary for ten months comes to Rs. 2,19,461/-. The court

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below found that the evidence of PW1 and Ext. X1 would show that the counter petitioner is having the capacity to maintain the 2nd and the 3rd respondents, who are admittedly the children of the counter petitioner. The 2nd petitioner is presently aged 7 years and the 3rd petitioner is aged nearly 4 years. Taking into consideration of the needs of petitioner Nos. 2 and 3 including the expenses for their education, the status of the parties and the probable income of the counter petitioner, the court below directed the counter petitioner to pay an amount of Rs. 3,000/- each to each of petitioner Nos. 2 and 3. The amount awarded by the court below is not exorbitant or unreasonable. No circumstance has been brought to my notice to indicate that the order impugned suffers from any infirmity warranting interference by this Court.

In the result, these Revision Petitions stand dismissed. Needless to state that this order will not take away the right of the revision petitioners in approaching the court below under Section 127 Cr.P.C. if the situation warrants.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge