

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

RPFC.No. 3 of 2015 (E1)

(MP.657/2013 IN MC.6/2013 OF THE FAMILY COURT, MALAPPURAM)

REVISION PETITIONER(S)/PETITIONER/RESPONDENT:

MUHAMMED SHAREEF,
S/O. AYISA, KADAPPADAN VEEDU, OMMALA, JELLIPPARA P.O.
KULIKKADAVU, MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.M.RAFIQ

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

1. SUHRABI
D/O. UNNYALI, PUTHIYATH VEEDU,
POTHUKKAL BHOODHANAM P.O., NILAMBUR TALUK,
MALAPPURAM DISTRICT- 679 334.

2. SUHALI, AGED 6½ YEARS (MINOR) ,
REPRESENTED BY GUARDIAN MOTHER, SUHRABI,
D/O. UNNYALI, PUTHIYATH VEEDU,
POTHUKKAL, BHOODHANAM P.O., NILAMBUR TALUK,
MALAPPURAM DISTRICT - 679 334.

3. SINAN, AGED 3½ YEARS (MINOR) ,
REPRESENTED BY GUARDIAN MOTHER, SUHRABI,
D/O. UNNYALI, PUTHIYATH VEEDU,
POTHUKKAL, BHOODHANAM P.O., NILAMBUR TALUK,
MALAPPURAM DISTRICT- 679 334.

R1-R3 BY ADV. SRI.S.RAJEEV

R1-R3 BY ADV. SRI.K.K.DHEERENDRAKRISHNAN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 19-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.3 of 2015

Dated this the 19th day of June, 2015.

O R D E R

Revision petitioner is the respondent in M.C.No.6/2013 on the files of the Family Court, Malappuram, as well as the petitioner in Cr1.M.C.No.657/2013 filed therein. The above M.C was filed by the respondents herein, who are the wife and children of the petitioner claiming maintenance allowance under Section 125(1) of the Cr.P.C. According to the respondents, the petitioner has neglected them and refused to pay maintenance allowance to them. She has no job or any source of income. She is unable to maintain herself and the two minor children born in the wedlock. She claimed maintenance allowance @ Rs.6,000/-, Rs.4,000/- and Rs.3,000/- respectively to the respondents 1 to 3 in the M.C. The petitioner was set ex parte and an ex parte order was passed on merits directing the

petitioner to pay maintenance allowance as prayed for.

2. Aggrieved by the ex parte order the petitioner filed above Crl.M.P. and after hearing both sides the court below set aside the ex parte order on condition that the petitioner deposits Rs.50,000/- towards maintenance allowance and on further payment of Rs.2,500/- to the respondents as cost within three weeks from 23/10/2014, failing which the petition will stand dismissed without further order. But the petitioner failed to comply with the said conditions and at present the petition to set aside the ex parte order stands dismissed by the impugned order under challenge.

3. Learned counsel for the revision petitioner advanced arguments challenging the findings of the court below whereby the court below imposed the conditions which are unreasonable to the petitioner.

4. Per contra, the learned counsel for the respondents contended that this is the second application for setting aside the ex parte order.

Earlier, he was set ex parte and Cr1.M.P.No.523/2013 was filed and the same was allowed on condition. But at that time also, he failed to comply with the conditions. According to the learned counsel for the respondents, in view of the said conduct of the petitioner, he shall not be given a further opportunity to contest the M.C. on merits.

5. Going by the impugned order, it is seen that the ex parte order was set aside on condition that the petitioner deposits Rs.50,000/- towards maintenance amount and on further payment of Rs.2,500/- to the respondents as cost within three weeks from the date of order. But the petitioner failed to comply with the said condition. In this revision, by order dated 26/5/2014 the petitioner was directed to deposit Rs.25,000/- and the same was deposited in compliance with the said order. Thereafter, by order dated 7/4/2015 the petitioner was again directed to deposit Rs.25,000/- on or before 30/5/2015 and the same was complied as directed by this Court. Thus, the

petitioner has deposited a total amount of Rs.50,000/- before the court below. The first respondent was permitted to withdraw the said amount.

6. In view of the above directions and due compliance with the said directions, I find that the petitioner can be given a further opportunity to contest the M.C. on merits, on condition that he shall pay a cost of Rs.5,000/- to the respondents or through their counsel appearing before this Court within a period of 45 days from today and produce receipt thereof before the trial court. On compliance with the said condition, the ex parte order allowing M.C.No.6/2013 and the impugned order passed in Cr1.M.C.No.657/2013 filed therein would stand set aside and Cr1.M.C.No.657/2013 will stand allowed. The court below shall restore the complaint on the files and proceed in accordance with law and dispose the same on merits, after affording an opportunity to adduce evidence to both parties. Needless to say, in the event of failure, the impugned orders will stand in force.

The court below is further directed to dispose the matter within a period of four months from today, if the M.C. is restored.

Sd/—
K. HARILAL, JUDGE

okb.