

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

RPFC.No. 40 of 2015 ()

ORDER IN MC 128/2013 OF FAMILY COURT, KANNUR DATED 15-07-2014

REVISION PETITIONER/RESPONDENT:

ASHRAF.C.H, AGED 46 YEARS
S/O.MUHAMMED, RESIDING AT SOUJATH MANZIL
NEAR NEERCHAL U.P.SCHOOL, P.O.KANNUR CITY
KANNUR TALUK AND DISTRICT

BY ADVS.SRI.T.MANOJ KUMAR
SRI.LIJIN THAMBAN

RESPONDENTS/PETITIONERS:

1. P.SAINABI, AGED 38 YEARS
W/O.ASHRAF, RESIDING AT PILAKEEL HOUSE
NEAR NEERCHAL U.P.SCHOOL, P.O.KANNUR CITY
KANNUR TALUK AND DISTRICT 670307
2. ANSAB P.S/O.ASHRAF, AGED 14 YEARS
3. JAMSHID P., S/O.ASHRAF, AGED 12 YEARS
4. NADHEER P., S/O.ASHRAF, AGED 10 YEARS
5. NIJAS, S/O.ASHRAF, AGED 7 YEARS
(RESPONDENTS NO.2 TO 5 ARE MINORS REP.BY THEIR GUARDIAN
MOTHER P.SAINABI, 1ST RESPONDENT)

R1-R5 BY ADV. SRI.C.K.SREEJITH
R1-R5 BY ADV. SRI.N.BHARAT

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 01-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

R.P.(F.C.) No. 40 of 2015

Dated this the 1st day of October, 2015.

ORDER

The revision petitioner is the respondent in M.C.No.128 of 2013 on the files of the Family Court, Kannur, who in this revision petitioner challenges the order passed by the court below directing the revision petitioner to pay an amount of ₹2,000/- each towards the monthly maintenance of respondent Nos. 1 and 3 to 5.

2. Heard both sides.

3. It is not disputed that the first respondent is the wife and other respondents are the children of the revision petitioner. Since the second respondent attained the age of majority, he was not granted any maintenance by the court below.

4. The respondents were earlier granted a total amount of ₹3,750/- per month towards the maintenance as per the order in M.C.No.194 of 2010 dated 28.7.2011.

5. The first respondent would contend that she is not having any source of income. Other respondents are minors. The third and fourth respondents were having pulmonary disease, for which they are undergoing treatment. Huge amount is required for their treatment. The respondents have no source of income for their livelihood and for their treatment. The revision petitioner is having the business in fish in the fish market, getting an amount of ₹2,00,000/- per month. Therefore, the respondents have filed this petition praying for getting enhancement of maintenance.

6. The revision petitioner contended that the revision petitioner is having back pain and hence he is not in a position to do any work. He is drawing only an amount of ₹2,000/- per month by working as a helper of a fish vendor. He is not having any income as stated by the respondents.

7. Before the court below, PW1 was examined and Exts.A1 to A10 were marked for the respondents herein. RW1 and RW2 were examined for the revision petitioner.

8. The court below after evaluating the oral and

documentary evidence adduced by both sides, found that PW1 is not having any source of income for her livelihood. The third and fourth respondents require treatment for pulmonary disease, for which they require money.

9. The revision petitioner examined RW2 to prove that the revision petitioner was getting only ₹2,000/- per month as wages. RW2 stated that RW2 is the shop owner in which RW1, who is the revision petitioner, is an employee. RW1 is paid only an amount of ₹2,000/- per month as salary. Now the salary has been enhanced to ₹3,000/- per month. The court below disbelieved the evidence of RW2 for so many reasons. The court below found that the revision petitioner was making payment of an amount of ₹3,750/- per month towards the maintenance. If the revision petitioner had only an income of ₹2,000/- per month, it was impossible for the revision petitioner to make the payment of an amount of ₹3,750/- per month as maintenance to the respondents. It was further found by the court below that no document was produced before the court by the revision petitioner or RW2 to show that

the revision petitioner was working as a helper under RW2, drawing only an amount of ₹2,000/- per month. The court below further found that the endeavor of RW2 was to help RW1, who was a colleague of RW2.

10. Considering the entire aspects of the case, the court below found that even though the revision petitioner did not prove his income, he is an able bodied person. He could do the coolie work and earn at ₹600/- per day as wages. The court below also observed that even though the revision petitioner contended that the revision petitioner was having back pain, no document was produced by the revision petitioner before the court to show that he was having any ailment.

11. The evidence on record would show that the respondent Nos.3 to 5 are school going children. Taking into consideration of the facts and circumstances of the case, including the needs of respondent Nos. 1 and 3 to 5, the expenses required for the treatment of the third and fourth respondents, the educational expenses of respondent Nos. 3 to

5 and the income of the revision petitioner, the court below directed the revision petitioner to pay an amount of ₹2,000/- per month each to each of respondent Nos.1 and 3 to 5, which in my view, is not exorbitant or unreasonable. No circumstance has been brought to my notice to indicate that the order passed by the court below suffers from any illegality, impropriety or incorrectness. Having gone through the relevant inputs, I am satisfied that the order passed by the court below does not suffer from any illegality, impropriety or incorrectness, warranting interference by this Court.

In the result, this RP(FC) stands dismissed.

The revision petitioner shall deposit the entire arrears of amount within three months. If any amount is deposited by the revision petitioner, the first respondent shall be at liberty to withdraw the same from the Family Court, Kannur.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

Scl.