

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

RPFC.No. 53 of 2015 ()

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AGAINST THE ORDER IN MC 300/2012 of FAMILY COURT, THIRUVANANTHAPURAM  
DATED 31-03-2014

REVISION PETITIONER(S)/COUNTER PETITIONER:

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M.BABU, AGED 44 YEARS  
S/O.MADHAVAN, VADAKKATHIVILAKATHU VEEDU, KARUMKALAM  
PUULUVILA P.O, KARUMKALAM VILLAGE  
THIRUVANANTHAPURAM DIST

BY ADVS.SRI.R.S.KALKURA  
SRI.M.S.KALESH  
SRI.HARISH GOPINATH  
SMT.R.BINDU

RESPONDENT(S)/PETITIONER:

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MENAKA @BINDU, AGED 35 YEARS  
D/O.SOBHANA, 'KRISHNA BHADRA', KUTHATHIL VILAKOM VEEDU  
KARUMKAL, PULLUVILA P.O, THIRUVANANTHAPURAM- 695 526

BY ADV. SRI.BLAZE K.JOSE  
BY ADV. SRI.SAJIN JOSEPH

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON  
02-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.P.(FC).53/15

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1:TRUE COPY OF THE SALARY CERTIFICATES.

ANNEXURE A2:TRUE COPY OF THE PETITION IN O.P.709 OF 2011 ON THE FILE OF  
FAMILY COURT, THIRUVANANTHAPURAM.

ANNEXURE A3:TRUE COPY OF THE PETITION IN O.P.829 OF 2011 ON THE FILE OF  
FAMILY COURT, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

**C.T. RAVIKUMAR, J.**

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**R.P. (FC).No.53 OF 2015**

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Dated this the 2<sup>nd</sup> day of March, 2015

**ORDER**

This revision petition is filed against order dated 31.3.2014 in M.C.No.300 of 2012 of the Family Court, Thiruvananthapuram. The revisionist was the counter petitioner and the respondent was the petitioner therein. The respondent herein filed the said M.C under section 125 Cr.P.C seeking maintenance from the revision petitioner. Certain indisputable and undisputed facts have to be looked into for the purpose of disposal of this case. The fact that the marriage between the parties was solemnised on 19.8.1996 and that the revision petitioner is a military personnel are not in dispute. The fact that the revision petitioner and the respondent are living separately is also not in dispute. There is no case for the parties that their marriage solemnised on 19.8.1996 was dissolved at any later point of time. M.C.No.300 of 2012 filed by the respondent-wife was allowed by the

Family Court with the finding that the revision petitioner had not filed any objection. True that it is stated therein that the revision petitioner was given opportunities to produce his salary details. However, he withheld the same. A scanning of the impugned order would reveal that the Family Court noticed the absence of any objection and also the fact that the revision petitioner is a military personnel and earning ₹30,000/- per month. Non-production of salary certificate despite granting opportunities in that regard constrained the Family Court to draw adverse inference with respect to the income of the revision petitioner. It was in the said circumstances that the M.C filed by the respondent-wife for maintenance under section 125 Cr.P.C was allowed directing the revision petitioner to pay an amount of ₹5000/- as monthly maintenance to her from the date of petition and continue to pay the same till she continues to be the wife/divorced wife.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent. Essentially, the grievance of the

petitioner is that he had no opportunity to contest the matter on merits. Along with this revision petition, the petitioner has produced salary certificates, issued for different periods. The last among them would reveal that his total salary is ₹32951/- and after deductions, he is getting ₹15451/-. In the light of the observations made by the Family Court that the petitioner had not produced the details regarding his salary despite affording several opportunities in that regard, I do not find fault with the Family Court in drawing adverse inference with respect to the said aspect. At the same time, there cannot be any doubt with respect to the fact that in a petition under section 125, Cr.P.C for maintenance, even in the absence of a detailed objection by the person from whom maintenance was claimed, the Family Court is bound to consider certain aspects for the purpose of arriving at the conclusion that the petitioner therein is entitled to get maintenance from the respondent and thereafter, to take into consideration the capacity and ability of the person from whom it is claimed before fixing the quantum of maintenance. After a careful consideration of the

reasoning of the Family Court appearing in paragraph 3 of the impugned order allowing maintenance to the respondent at the rate of ₹5000/- and considering the rival submissions, I am of the view that it is only appropriate to afford one last opportunity to the petitioner to contest the matter on merits, in the interest of justice. In such circumstances, in order to afford one last opportunity to the petitioner to contest the matter on merits, the impugned order is set aside and the Family Court is directed to pass fresh orders after affording one last opportunity to the petitioner to produce evidence on his side. Needless to say that in case the revision petitioner adduces evidence availing the opportunity the matter shall be proceeded further, in accordance with law. Till a fresh decision is taken in the matter, the revision petitioner shall make payment of an amount of ₹3500/- to the first respondent as interim monthly maintenance. Fresh orders shall be passed by the Family Court as expeditiously as possible, preferably within a period of four months from the date of production of a copy of this order.

This revision petition is disposed of as above.

**Sd/-**  
**C.T. RAVIKUMAR**  
**(JUDGE)**

**spc/**

**R.P.(FC).53/15**

**6**

**C.T. RAVIKUMAR, J.**

**JUDGMENT**

**September, 2010**

