

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

RPFC.No. 58 of 2015 ()

MC 154/2010 of FAMILY COURT,THRISSUR

REVISION PETITIONER(S)/RESPONDENT:

PREMAKUMARAN, S/O.PADMANABHAN, AGED 51 YEARS
SREEKRISHNA SADANAM, KALLEKULANGARA P.O
OLAVAKKODE, PALAKKAD DISTRICT

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENT(S)/PETITIONER & STATE:

1. SUDHA, D/O.NARAYANANKUTTY, AGED 45 YEARS
ARYAMPADATH HOUSE, PATTIPARAMBU P.O
THIRUVILWAMALA 680588

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.K.ASOKAN
R2 BY PUBLIC PROSECUTOR SRI.JUSTINE JACOB.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 09-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

=====

R.P.(F.C) No.58 of 2015

=====

Dated this the 9th day of July, 2015

ORDER

This revision petition is filed challenging the legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the Family Court, Thrissur in M.C.No.154/2010 filed by the 1st respondent herein. According to the 1st respondent, she is the legally wedded wife of the petitioner and he is liable to pay maintenance allowance under Section 125 of the Code of Criminal Procedure. But he has neglected to maintain her and refused to pay maintenance allowance from 03.04.2009 onwards and thereafter she is residing separately without forfeiting the right to claim maintenance allowance. The 1st respondent has no job or any other sources of income and she is unable to maintain herself; but the petitioner is an Electrician and getting more than ₹10,000/- per month.

Moreover, he is running a fast food shop under the name and style 'Sreekrishna Fast Food' and getting ₹20,000/- per month from that business. She claimed ₹5,000/- per month as maintenance allowance.

2. The revision petitioner admitted the marital status of the 1st respondent as his legally wedded wife. But, according to him, she is residing separately without reasonable cause and thereby she is not entitled to get maintenance allowance from him. She is able enough to maintain herself as she is engaged in tailoring work and getting more than ₹15,000/- per month. So also, he denied the allegation that he is an Electrician and getting ₹10,000/- per month and he is running a fast food shop and getting ₹ 20,000/- per month. According to him, he is a helper of an electrician only and he is getting very meagre income. After considering the rival pleas and evidence let in by both parties, consists of Exts.D1 to D3 and oral evidence of the 1st respondent and the petitioner, the court below directed

the petitioner to pay maintenance allowance @₹3,500/- per month to the 1st respondent. This order is under challenge in this revision petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

4. The learned counsel for the petitioner advanced arguments assailing the findings of the court below whereby the court below directed to pay maintenance allowance to the 1st respondent as shown above. The sum and substance of the argument advanced by the learned counsel for the petitioner is that the 1st respondent left the company of the petitioner without sufficient reasons and she is interested to live along with the parents only. It is also contended that the quantum of amount determined by the court below is also excessive and disproportionate with his income.

5. Per contra, the learned counsel for the 1st respondent advanced arguments to justify the findings

whereby the court below allowed the maintenance claim. According to him, it has come out in evidence that the petitioner treated the 1st respondent with cruelty and thereby, she was constrained to leave the company of the petitioner. So also, the quantum of amount fixed by the court below is just and proper.

6. The marital status of the 1st respondent is not disputed and the fact that they are living separately from 03.04.2009 onwards is also not disputed. According to the 1st respondent, her married life with the petitioner was very tragic and she could not have a happy family life with the petitioner as he treated her with cruelty, both mentally and physically. Though the petitioner contended that she left the company on her own volition, the 1st respondent stated that, it was the petitioner who has taken her to her parent's house and left there. But, going by the sequences of events, after 2009, there is no material available on record to show that there was an earnest attempt from the part of

the petitioner to receive the company of the respondent. In the absence of such materials during the last four years, it could be reasonably presumed that the petitioner is not interested to receive the company of the respondent.

7. Going by the impugned order, it is seen that while the respondent was in the witness box, she has narrated so many incidents by which she suffered mental pain and agony and after analyzing those incidents, the court below arrived at a finding that it cannot be held that the respondent is residing separately without sufficient reasons. I do not find any reason to reverse such finding made by the learned Judge, who had an opportunity to witness the demeanor of both witnesses in the witness box.

8. Coming to the quantum of maintenance allowance, the petitioner has no case that he is physically disabled or incapacitated to do work. He himself admitted that he is a helper of an Electrician. As rightly noted by the trial court, even a coolie worker used to get more than ₹15,000/- per

month, if he is ready and willing to work. However, the petitioner is also an Assistant to a skilled worker. In the absence of any medical evidence to establish his loss of earning capacity, he is liable to pay maintenance allowance to his wife in accordance with her family status, standard of life and day to day requirements. Even though he had made an attempt to establish his physical disability by producing Exts.D1 to D3, the court below rejected the same on a finding that those documents are not properly proved before the court below. Even if Exts.D1 to 3 are admitted at its entirety, the same would not certify that he is unable to do work. In this analysis, I find that the direction to pay ₹ 3,500/- per month is just and proper and warranting no interference under revisional jurisdiction.

9. Having regard to the facts and circumstances of the case, the revision petitioner is given five months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of 'two' months

from today and the remaining balance shall be paid within the next 'three' months. In the event of failure to pay the first instalment within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

Sd/-
K.HARILAL, JUDGE.

stu

//True copy//

P.A to Judge