

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

RPFC.No. 60 of 2015 ()

(MC 135/2012 of FAMILY COURT, KOTTAYAM AT ETTUMANOOR)

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REVISION PETITIONER/PETITIONER:

SAJITHA P.SASIDHARAN, AGED 32 YEARS,
D/O.SASIDHARAN ACHARI, PUTHENPURAYIL HOUSE
ERAVINELLOOR P.O., PUTHUPPALLY VILLAGE
NOW RESIDING AT VADAKEMURIYIL HOUSE, PARIYARAM P.O.
VAKATHANAM, KOTTAYAM.

BY ADV. SMT.VALSAMMA KURIAN JOSE

RESPONDENT/RESPONDENT:

GIRISH KUMAR.C.K, AGED 40 YEARS,
S/O.SUKUMARAN, CHERIVUPARAMBU HOUSE, MOOLAVATTOM P.O.
PUNNACKAL KARA, PANACHIKKAD VILLAGE,
KOTTAYAM DISTRICT-686012.

R1 BY ADV. SRI.A.T.ANILKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 12-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.60 of 2015

Dated this the 12th day of June, 2015.

O R D E R

The revision petitioner is the petitioner in M.C.No.135/12 on the files of the Family Court, Kottayam at Ettumanoor. The above petition was filed against the respondent, who is the husband of the petitioner, under Section 125(1) of the Code of Criminal Procedure claiming maintenance allowance. The petitioner claimed maintenance allowance @ Rs.10,000/- per month. But, in the proof affidavit there was no averment claiming maintenance allowance except claim for payment of house rent. Since no evidence has been adduced by the petitioner regarding her maintenance claim, the court below rejected the claim by the impugned order. The legality of the rejection of maintenance claim owing to the lack of claim in the proof affidavit is under challenge in this revision petition.

2. The learned counsel for the revision petitioner submits that there was an omission from the part of the counsel in not incorporating the claim for maintenance also in the common proof affidavit filed by the petitioner. The learned counsel further prayed for an opportunity to adduce evidence enabling her to substantiate the claim before the trial court.

3. Per contra, the learned counsel for the respondent submits that no claim was put forward in the proof affidavit for maintenance. Therefore, the court below is justified in rejecting the claim.

4. Going by the impugned order passed in the M.C., it is seen that the claim was rejected on the sole reason that no evidence has been adduced by her regarding her maintenance claim. More over, there is not even a sentence claiming any maintenance from the husband. But, going by the petition, it is seen that the petitioner has claimed Rs.10,000/- as monthly maintenance allowance.

5. Though I cannot find fault with the court below

for rejecting the claim, I am inclined to take a lenient view in a different perspective. The right of maintenance under Section 125 of the Cr.P.C. is a social measure with an object to prevent vagrancy and destitution. Therefore, the claim has to be considered liberally. When substantial justice and technical considerations are pitted against each other, substantial justice deserves to be preferred rather than technicalities.

6. Going by the petition, it is seen that the petitioner has claimed Rs.10,000/- per month as maintenance allowance. Therefore, it can be reasonably presumed that the lack of averments in the proof affidavit is an omission only. In that view of the matter, the petitioner is given another opportunity to adduce evidence on her maintenance claim.

7. Consequently, the impugned order passed in M.C.No.135/2012 is set aside and the matter is remitted back to the Family Court for fresh consideration, after affording an opportunity to both parties to adduce

evidence. The court below shall pass order afresh within a period of three months from today. Needless to say, that part of the common order which deals with M.C.No.135/2012 alone will stand set aside.

Sd/-
K. HARILAL, JUDGE

okb.