

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

RPFC.No. 64 of 2015 ()

AGAINST THE ORDER IN MC 49/2009 of FAMILY COURT,ERNAKULAM DATED
22-05-2013

PETITIONER/RESPONDENT:

RAJEEV C.P.,AGED 41 YEARS,
S/O.PEAGAN, PUTHUVYPU (PO), VYPIN (VIA)
ELAMKUNNAPUZHA VILLAGE,
ERNAKULAM DISTRICT, PIN - 682 508.

BY ADVS.SRI.R.O.MUHAMED SHEMEEM
SMT.NASEEHA BEEGUM P.S.

RESPONDENTS/PETITIONER:

SUNITHA V.K., AGED 39 YEARS
VACHAKATHARA HOUSE, EDAVANAKKADU (PO), VYPIN (VIA)
ELAMKUNNAPUZHA VILLAGE, ERNAKULAM DISTRICT.

R1 BY ADV. SRI.M.T.BALAN
SRI.B.JAYABAL

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 12-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

R.P(F.C) No. 64 of 2015

Dated this the 12th day of February, 2015

ORDER

This revision petition is filed against the order dated 22.5.2013 passed by the Family Court, Ernakulam in M.C.No.49/2009. The revisionist was the respondent and the respondent herein was the petitioner therein. It was a petition filed under section 125 of the Code of Criminal Procedure seeking maintenance from the revision petitioner. The revision petitioner entered appearance and resisted the claim. To sustain the claim the respondent herein got herself examined as PW1 and got marked A1 to A4. No oral evidence was adduced on the side of the revision petitioner. He produced Ext.B1 which is only a copy of the transfer petition filed by the respondent herein dated 12.4.2011. On evaluation of the evidence the family court found that the status of the first respondent as wife is not at all in dispute. The revision petitioner has also failed to make out any ground to make the respondent disentitled to claim maintenance and the family court, in

the circumstances, found that the revision petitioner is liable to maintain the first respondent. Taking into account the evidence adduced by the respondent regarding the capacity of the petitioner the family court fixed the rate of monthly maintenance as Rs.2,500/-. The petitioner was directed to pay monthly maintenance at the aforesaid rate from the date of the petition viz., 21.2.2009. This revision petition is filed challenging the said order.

2. From the pleadings in the revision petition and also from the arguments advanced before this Court it is evident that the status of the first respondent as wife of the revision petitioner is not at all disputed by him. It also not in dispute that the petitioner and the respondents are now living separately. In such circumstances, to wriggle out the liability to pay the maintenance the revision petitioner, the husband had to succeed in establishing that the respondent has incurred a disability disentitling her from claiming maintenance mentioned under section 125(4), Cr.P.C or that she is able to maintain herself. It is to be noted that in this case the revision petitioner has not mounted the box and adduced any evidence. In the said circumstances, it can only be said that no

evidence is available either to held that the respondent is living in adultery or she is refusing to live with the respondent without any sufficient reason. Nobody got a case that they are living separately by mutual consent. The petitioner has also failed to establish that she is able to maintain herself. In such circumstances, I could not find any legal flow in the finding of the family court that the revision petitioner is bound to maintain the first respondent and that respondent herein is entitled to an order for maintenance under section 125 Cr.P.C.

The learned counsel for the petitioner submitted that even in such circumstances the family court ought to have considered the question of capacity and ability of the revision petitioner before fixing the rate of monthly maintenance. In the M.C the respondent contended that the petitioner herein is a painter by profession and getting Rs.500/- per day. A careful analysis of the discussion of the evidence of the family court would reveal that the petitioner himself admitted the fact that he is doing painting work or that he is painter. While the petitioner-husband contends that he is getting Rs.500 per day his contention is that he is getting work only for 15

days. As noticed hereinbefore, the petitioner has not adduced any evidence before the Family Court. The admitted position is that the revision petitioner is a painter by profession and he is working for some days in a month. Therefore, it can be safely said that he is an able bodied person. In such circumstances, the only question to be considered in the revision petition is whether the amount fixed by the court as monthly maintenance viz., Rs.2,500/- is exorbitant warranting interference in exercise of the revisional jurisdiction. Taking into account the present cost of living one cannot say that the monthly maintenance fixed by the family court to be paid by the revision petitioner is exorbitant warranting interference in exercise of the revisional jurisdiction. In the said circumstance, this revision petition is liable to fail and accordingly it is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk