

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

RP(FC).No.72 of 2015 ()

AGAINST THE ORDER IN MC 114/2013 of FAMILY COURT, KOTTAYAM AT
ETTUMANOOR

REVISION PETITIONER/RESPONDENT:

SALBISH GRACY MATHEW @ ABRAHAM, AGED 42 YEARS
S/O.N.A.MATHEW, NEDUMKOTTIL HOUSE
ARUNOOTIMANGALAM P.O., KULASEKHARAPURAM KARA
KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT

BY ADVS.SRI.M.B.SANDEEP
SMT.R.PRIYA
SRI.V.VISAL AJAYAN
SRI.B.SURJITH
SRI.ABHILASH JOSE
SRI.M.A.AHAMMAD SAHEER
SMT.R.ANJANA

RESPONDENT(S)/PETITIONER:

THUSHARAMOL JOSEPH @ CHRISTY
D/O.JOSEPH, PUTHUCKATTUVAKANIL HOUSE
ATHIRAMPUZHA P.O., ATHIRAMPUZHA VILLAGE
KOTTAYAM DISTRICT - 686562.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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R.P.(FC) No.72 OF 2015

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Dated this the 25th day of February, 2015

ORDER

This revision petition is filed against the judgment dated 29.11.2014 in M.C.No.114 of 2013 passed by the Family Court, Kottayam. The respondent-wife moved the M.C claiming maintenance from the revision petitioner under section 125 of the Code of Criminal Procedure. It is stated therein that the marriage between herself and the revision petitioner was solemnized on 5.01.2005 and thereafter, they were living as husband and wife. However, they got no issues and from 9.3.2011, the revision petitioner refused to maintain her and she is unable to maintain herself. It is further stated therein that the revision petitioner is doing real estate business and he is getting a monthly income of ₹20,000/-. That apart, it is contended that the revision petitioner is having 7 acres of

rubber plantation and he is getting monthly income of ₹50,000/- from it. The revision petitioner entered appearance and resisted the claim of the respondent. He took up the contention that the respondent-wife is a graduate and she is able-bodied and therefore, she is capable of maintaining herself. That apart, it is contended that she is having landed properties at Athirampuzha and a BSNL tower is installed in the said property and she is getting monthly rent of ₹20,000/-. The above M.C was jointly tried with certain other original petitions and the revision petitioner was examined as PW1 and Exts.A1 to A12 were got marked on his side. On the side of the respondent herein, she was examined as RW1. She got examined one C.J Joseph as RW2, one M.P. Ipe as RW3 and one Anil Kumar C. Joseph as RW4 and Exts.B1 to B8 were also got marked on her side. After careful evaluation of the evidence on either side, the Family Court found that the revision petitioner herein did not dispute his marriage with the respondent and that she is not able to maintain herself and consequently held that the revision petitioner is liable to

maintain the respondent. Accordingly, the revision petitioner was directed to pay maintenance at the rate of ₹2,000/- per month. It is challenging the same that this revision petition has been filed.

2. I have heard the learned counsel for the revision petitioner. A perusal of the impugned judgment and the memorandum of the revision petition would reveal that the petitioner did not dispute his marriage with the respondent herein and that he did not have a case that the respondent herein is gainfully employed. So also, he did not let in any evidence to establish that she is deriving income through any other means to maintain herself. His contention is that she is having landed properties and at any rate, being a graduate she should have earnestly endeavoured to earn a job. According to the revision petitioner, since she had not made any endeavour to get job she is disentitled to claim maintenance. What is the basis of the said contention? Merely because the wife is well educated whether she can be deprived of the right to claim maintenance under section 125,

Cr.P.C when she does not incur any disqualification to claim the same.

I have no hesitation to hold that such a contention deserves no consideration in a petition filed under section 125 Cr.P.C for maintenance. If the said contention of the revision petitioner is accepted in case the wife who claims maintenance is able-bodied and a graduate it is her onus to prove that she could not secure a job despite earnest efforts to earn entitlement to claim maintenance.

When once the factum of marriage is admitted, to wriggle out of the liability to pay maintenance when they are living separately, the husband has either to show that the wife is able to maintain herself or she has incurred disability and disqualification to claim maintenance.

It is to be noted that in this case the revision petitioner did not have a case that the respondent-wife has incurred any disqualification in the light of the provisions under section 125(4) Cr.P.C to claim maintenance. The only contention is that she is a graduate and therefore, she should have attempted for a job and since she has not made any endeavour to get a job, she is not entitled to claim

maintenance. The other contention surviving for consideration is that she is having some landed properties. The case of the revision petitioner is that 95 cents of property which was given to the respondent by her mother was transferred in favour of her brothers and she is having 28 cents of properties and she is getting monthly income of ₹20,000/-. Even if it is taken that she is having 28 cents of property in her name, it is to be noted that there is absolute absence of any evidence to show that she is deriving any income out of it. There cannot be any doubt with respect to the position that even if the wife is earning some meagre amount from any source that would not by itself make her disentitled to claim maintenance from the husband. In such circumstances, having carefully considered the judgment passed by the Family Court after careful consideration of the evidence I do not find any reason to interfere with the finding of the Family Court that the revision petitioner is liable to pay maintenance to the respondent-wife. In such circumstances, what survives for consideration is whether the monthly maintenance fixed by the Family

Court is exorbitant warranting interference. Only an amount of ₹2,000/- was ordered as monthly maintenance. There is no case for the revision petitioner that he is not an able bodied person. In such circumstances, even if it is taken that the respondent wife has failed to prove the annual income of the revision petitioner he cannot wriggle out of the liability to maintain her. Taking into account the cost of living I do not find any reason to hold that the fixation of monthly maintenance at ₹2,000/- is exorbitant inviting interference invoking the revisional jurisdiction. In short, there is no reason to interfere with the judgment passed by the Family Court allowing maintenance in favour of the respondent-wife. In the result, this revision is liable to fail and accordingly, it is dismissed.

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

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010