

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

RPFC.No. 85 of 2015 (E1)

AGAINST THE ORDER IN MC 401/2013 of FAMILY COURT, KANNUR DATED 07-01-2015

REVISION PETITIONER(S)/RESPONDENT:

**E.PRAVEEN, AGED 44 YEARS,,
S/O. ERAYIKUNHIRAMAN, ERAYI HOUSE, PUZHATHI AMSOM DESOM
P.O. KOTTALI, KANNUR TALUK, KANNUR DISTRICT.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.ASHIS**

RESPONDENT(S)/COMPLAINANTS:

- 1. K.LEKHA, AGED 38 YEARS,
D/O. K.V.KUNHIKANNAN, PEKKADAM HOUSE,
VADAKKETHRIKKARIPUR, HOSDURG TALUK, KASARGOD DISTRICT.**
- 2. K. ABHINAND, S/O. PRAVEEN, AGED 7 YEARS,
MINOR, REPRESENTED BY GUARDIAN MOTHER K. LEKHA-676001.**

**R1&2 BY ADV. SRI.PBHARATHAN
R1&2 BY ADV. SRI.ZUBAIR PULIKKOOL**

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.85 of 2015

Dated this the 26th day of May, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.401/2013 on the files of the Family Court, Kannur. The above M.C. was filed by the respondent, who is the divorced wife of the revision petitioner, seeking maintenance allowance under Section 125 of the Code of Criminal Procedure to her and the child. According to her, she is unable to maintain herself and the second respondent. She has no job or any other sources of income; whereas the revision petitioner has been working as a Mason and earning an amount of Rs.20,000/- per month. She claimed maintenance allowance at the rate of Rs.4,000/- each per month. The revision petitioner denied the allegation that he is getting Rs.20,000/- per month. According to him, it is also incorrect to state that he has a bank deposit of Rs.5 lakhs. His bank balance is

Rs.50,347/- only in North Malabar Gramin Bank and Rs.44,973/- in Puzhathi Service Co-operative Bank, Kakkad. It is also contended that the first respondent is able enough to maintain herself. That apart, it is his case that there was an agreement between the revision petitioner and the first respondent and by that agreement the first respondent has forfeited her right of maintenance. According to him, he is partially disabled due to loss of hearing. After considering the rival contentions, the court below directed the revision petitioner to pay maintenance allowance at the rate of Rs.3,000/- to the first respondent and Rs.2,500/- to the second respondent. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

2. The learned counsel for the revision petitioner advanced arguments assailing the findings whereby the court below directed the revision petitioner to pay maintenance allowance to the respondents

notwithstanding the agreement entered between the revision petitioner and the first respondent at the time of dissolution of marriage. According to the learned counsel for the revision petitioner, the first respondent is disentitled to get maintenance allowance from the revision petitioner, as she herself has forfeited her right by the agreement entered between them. It is also contended that the quantum of maintenance determined by the court below is disproportionate with his income and it is excessive. Per contra, the learned counsel for the respondents advanced arguments justifying the findings whereby the court below rejected the contentions raised by the revision petitioner.

3. The question that arises for consideration is whether there is any illegality or impropriety in the findings whereby the court below found that the first respondent is entitled to get maintenance allowance and whether the quantum of maintenance determined by the court below is just, proper and proportionate with the income of the revision petitioner.

4. The status of the first respondent as divorced wife is not disputed. Needless to say, under Section 125 of the Cr.P.C., a divorced wife also is entitled to get maintenance allowance unless she is married again. The revision petitioner has no case that the first respondent has married again. Similarly, the paternity of the second respondent is also not disputed. A father is liable to pay maintenance allowance to his child.

5. Then the point is whether the agreement, by which the first respondent waived her right of maintenance, entered at the time of dissolution of marriage, disentitles her to claim maintenance allowance under Section 125 of the Cr.P.C. This point was clarified and answered negatively in the decision reported in *Rajesh R. Nair v. Meera Babu* [2013 (1) KLT 899]. The Apex Court held that an agreement executed by the parties to marriage to waive the right to maintenance of the wife, guaranteed under Section 125 of the Cr.P.C. is not a valid agreement as the said agreement is against the public policy and, hence,

void. In view of the authoritative pronouncement of legal position held by the Supreme Court, the court below can be justified in finding that the first respondent is entitled to get maintenance allowance.

6. What remains to be considered is the quantum of maintenance allowance. It has come out in evidence that the first respondent has no job or any source of income and she has not married again after divorce. Whereas the revision petitioner himself admitted that he is working as a Mason. The revision petitioner contended that he is disabled by loss of hearing at 50%. To prove the said contention, Ext.B6 disability certificate issued by the Medical Board constituted by a District Medical Officer has been produced and marked. As rightly held by the court below, Ext.B6 does not help the revision petitioner to escape from the responsibility to maintain divorced wife and child. At the same time, it has come out in evidence that after the divorce the revision petitioner has married again. Having regard to the fact that he has to maintain the second wife also and his parents, I am of

the opinion that the quantum of maintenance allowance fixed by the court below for the first respondent is a little excessive and the same will stand reduced to Rs.2,500/-.

7. Coming to the quantum of maintenance allowance fixed for the second respondent, it has come out in evidence that the second respondent is a school going minor child and the child has to avail treatment for ophthalmic problem. So a considerable amount is required for the treatment. Maintenance includes provision for food, accommodation, clothing, treatment, educational expenses, and other incidental expenses. In that view of the matter, I find that the quantum of maintenance allowance determined for the second respondent is just and proper and no interference is warranted.

8. The learned counsel for the revision petitioner submits that the revision petitioner is unable to pay entire arrear in lump sum and urged for some time to pay the arrear. Having regard to the fact that he is a manual labourer he has given four months time to pay

the arrear, if any, provided that half of the entire arrear shall be deposited within two months and the remaining balance shall be deposited within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC) is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.