

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

RPFC.No. 86 of 2015 ()

AGAINST THE ORDER IN MC 100/2013 of FAMILY COURT, THALASSERY DATED
04-12-2014

REVISION PETITIONER(S)/COUNTER PETITIONER:

PALLIPATH AYYOOB, AGED 44 YEARS
S/O.SADULI, SAMEERA MANZIL, IRIKKUR PO
KANNUR DISTRICT.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.C.H.ABDUL RASAC
SMT.GRACY POULOSE

RESPONDENT/PETITIONER:

N.K.SAIFUNNISSA,, AGED 39 YEARS
D/O.MAMMOOTTY HAJI, THAZNAZ, KEEZHOOOR
P.O.IRITTY, THALASSERY, KANNUR-670 703.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 02-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

R.P.(F.C)No.86 of 2015

Dated 2nd March, 2015

ORDER

This revision petition is directed against the order dated 4.12.2014 in M.C.No.100 of 2013 of the Family Court, Thalassery filed by the respondent-wife claiming maintenance under Section 125 of the Code of Criminal Procedure from the revision petitioner. Evidently, the revision petitioner did not dispute his marriage with the respondent. Their marriage was solemnised on 13.8.2012. The contention of the respondent-wife before the Family Court was that she started living separately from the revision petitioner owing to the harassment and cruelty on the part of the revision petitioner. Her case was that the revision petitioner has been neglecting to maintain her and that she is not able to maintain herself. She claimed monthly maintenance at the rate of ₹ 10,000/-. The revision petitioner entered appearance and resisted the claim of the respondent for maintenance under Section 125 of the Code of Criminal Procedure. It is contended that it is incorrect to say that he is a real estate broker and got landed properties. According to him, he got no landed properties and therefore, there is no question of deriving income from landed

properties. It is also contended that the respondent herein/the petitioner therein got landed properties and that she is a well known real estate dealer and a partner in a number of partnership firms. In short, according to the revision petitioner, she is able to maintain herself. That apart, it is also contended that the respondent is not entitled to maintenance as she contracted the second marriage with the revision petitioner concealing the fact that she is incapable to conceive in future. The revision petitioner has also denied the allegation relating cruelty and harassment and also contended that the amount claimed as maintenance is exorbitant. To substantiate their respective contentions in their respective pleadings the parties have let in evidence. On the side of the revision petitioner he got himself examined as CPW1 and got marked Exts.B1 to B7. The respondent-wife got examined as PW1. On a careful analysis of the evidence the Family Court found that the revision petitioner is liable to maintain the respondent herein. Evidently, there is no denial of the marriage by the revision petitioner. I have already taken note of the contentions raised by the revision petitioner for resisting the claim of the respondent. The revision petitioner further contended that he was having a living spouse at the time of marriage and now, he is living with her and the children and therefore, he has to maintain her and the children born in the said wedlock. In short, the revision petitioner is taking up such a contention to wriggle out of the

liability to maintain the respondent, under the impugned order. In fact, that contention was also considered and rejected by the Family Court, as is obvious from the impugned order.

2. I have heard the learned counsel for the revision petitioner.

3. As noticed hereinbefore, the revision petitioner did not dispute the fact of his marriage with the respondent. It is also to be noted that he would admit the fact that he contracted the marriage with the respondent at a time when he got a living spouse and now, according to him, he is living with his first wife and children. The learned counsel for the revision petitioner submitted that being a person belonging to Muslim community it is permissible for him to contract a second marriage by virtue of the provisions under the Muslim Personal Law (*Shariat*) Application Act, 1937 even during the life time of the first wife. But, it is not without any condition. It is nobody's case that the petitioner is a Government servant or an employee in any authority where there is a legal inhibition for marrying a woman when he is having a living spouse. In such permissible circumstances also he is bound to treat the wives justly and equitably. How can the revision petitioner attempt to wriggle out of the liability to maintain the second wife saying that he has to maintain his first wife and children ? How can a person belonging to Muslim Community enter into a second marriage if he is incapable of

maintaining the second wife ? I have no hesitation to hold that the revision petitioner cannot assign such reason to wriggle out of the liability to maintain the respondent if he is otherwise liable to maintain her. In the context of the contentions it is relevant to note that, going by the provisions under Section 2(viii)(f) of the Dissolution of Muslim Marriages Act, 1939, a Muslim husband having more than one wife, failure to treat the wives equitably in accordance with the injunctions of the Quran would also amount to cruelty entitling the wife suffering from such cruelty to obtain a decree for dissolution of her marriage. To establish that he is not liable to maintain her the revision petitioner was to show that the respondent-wife is able to maintain herself or that she incurred a disqualification which would disentitle her from claiming maintenance in the light of the provisions under Section 125(4) Cr.P.C. Obviously, there is no case for the revision petitioner that the respondent incurred any disqualification disentitling her from claiming maintenance under Section 125(4) Cr.P.C. True that, he has taken up a contention that she is able to maintain herself. Though the revision petitioner produced Exts.B1 and B2 he did not adduce any evidence to show that the respondent is deriving income out of the properties covered by Exts.B1 and B2 or that she is deriving income from other sources to maintain herself. The mere fact that the wife is possessing property by itself is no reason for holding that she is able to maintain herself. After

a careful consideration of the discussion of the evidence and the conclusions arrived at by the Family Court I am constrained to say that no ground whatsoever to interfere with the finding of the Family Court regarding the liability of the revision petitioner to maintain the respondent or with the fixation of the quantum of monthly maintenance at ₹ 4,000/- was made out by the revision petitioner. When once the marriage is admitted and it could not be said that respondent-wife is refusing to live with the husband without sufficient reason the allegation that the respondent herein contracted the marriage concealing the fact that she could not conceive any further cannot be a reason to treat the respondent as disentitled to claim maintenance. In short, the finding of the Family Court that the revision petitioner is liable to maintain the respondent-wife suffers from no infirmity whatsoever warranting interference in invocation of revisional power. Taking into account the cost of living and also the fact that the revision petitioner is an able bodied person aged only 44 years the fixation of monthly maintenance at ₹ 4,000/- cannot be said to be on the higher side warranting an interference. In the result, this revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS