

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 19372

RPFC.No. 104 of 2015 ()

AGAINST THE ORDER IN MC 338/2012 of FAMILY COURT,THRISSUR

REVISION PETITIONER(S)/PETITIONER/RESPONDENT IN MC NO.338/2012:

**HABEEB KOYA THANGAL AGED 50 YEARS
S/O. NALAKATHU VELLOORAKAYIL LATE KOYA THANGAL
THRITHALLOOR DESOM, VATANAPPALLY VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT(S)/PETITIONERS IN MC NO.338/2012:

- 1. NISHA, AGED 38 YEARS
D/O. KANNATT LATE MUHAMMED, PERAKAM DESOM
POOKKODU VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT.**
- 2. MINOR KHALID , AGED 16 YEARS
S/O. NISHA & HABEEB KOYA THANGAL
(MINOR REPRESENTED BY MOTHER AND GUARDIAN
1ST RESPONDENT, NISHA).**

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 25-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

sab

K.HARILAL, J.

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R.P.(FC) No.104 of 2015

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Dated this the 25th day of May, 2015

ORDER

The revision petitioner is the respondent in M.C. No. 338 of 2012 on the files of the Family Court, Thrissur. The above M.C. was filed by the respondents herein, who are the wife and son of the petitioner, under Section 125 of Cr.P.C. claiming maintenance allowance from the petitioner. The court below directed him to pay maintenance allowance @ ₹5,000/- to the 1st respondent. The legality of the entitlement of maintenance allowance of the 2nd respondent and the correctness of the quantum of maintenance allowance fixed for the 1st respondent are under challenge in this revision petition.

2. Heard the learned counsel for the petitioner.

3. The learned counsel for the revision petitioner advanced arguments challenging the findings whereby the

court below directed the revision petitioner to pay maintenance allowance to the 1st respondent.

4. Going by the impugned order, it is seen that the marital status of the 1st respondent as well as the paternity of the children are not disputed. Though, the 1st respondent claimed maintenance allowance for the 2nd respondent, it has come out in evidence that all the three children are living with the petitioner. Therefore, the court below can be justified in rejecting the claim for the 2nd respondent.

5. It is the case of the 1st respondent that she is the divorced wife of the petitioner. The petitioner pronounced 'Talaq' and 'Talaq' has been accepted by the 1st respondent. The petitioner alleged that the 1st respondent is leading an adulterous life. It is seen that the court below made an enquiry as to the veracity and genuineness of the said allegation. But, I am of the opinion that since the divorced wife is also entitled to get maintenance allowance, such an enquiry is unnecessary and is of no consequence at all. It is also contended that the petitioner had paid ₹60,000/- in discharge of his marital obligation in lump sum by way of

compensation. But, the court below found that the petitioner has failed to prove that such an amount was given to the 1st respondent as compensation consequent on divorce. Therefore, I find no fault with the finding of the court below that the 1st respondent is entitled to get maintenance allowance.

6. What remains to be considered is, whether the quantum of compensation fixed by the court below is just and proper?

7. It is the case of the 1st respondent that the petitioner is working at gulf as a supervisor in a company and getting more than ₹1,00,000/- as salary. He is also getting ₹1,00,000/- per month as income from bank deposits. Whereas, the 1st respondent has no job or income and she is unable to maintenance herself. The 1st respondent is in need of ₹10,000/- per month. The petitioner admitted that he has been working in gulf country since the last more than 18 years. But, he has not disclosed his salary. At the same, he admitted that he gets salary through the bank. Salary is a fact exclusively within

the knowledge of the person who gets it. The non-production of the salary certificate shows that he is getting a good salary as Supervisor in a company by name 'Gulfar' Company in gulf. In this respect, an adverse inference under Section 114(g) of the Indian Evidence Act also can be drawn against the petitioner. The petitioner is liable to pay maintenance allowance in accordance with the status and day to day requirements of the 1st respondent, though, she is a divorced wife.

8. In the above view, the court below can be justified in fixing ₹5,000/- per month as monthly maintenance allowance. The quantum of maintenance allowance determined by the court below is just and proper, warranting, no interference under revisional jurisdiction.

The revision petition is dismissed accordingly.

Sd/-
K.HARILAL,
JUDGE.

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P.A to Judge