

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

RPFC.NO. 111 OF 2015 (E1)

AGAINST THE ORDER IN MC 148/2013 OF FAMILY COURT, THALASSERY DATED 31-01-2014

REVISION PETITIONER(S)/COUNTER PETITIONER:

**FAISAL K.V, AGED 41 YEARS,
S/O.ANDOOTTY, RASHEED MANZIL, KADAMBUR ROAD,
EDAKKAD(PO), KANNUR TALUK,
REPRESENTED THROUGH POWER OF ATTORNEY HOLDER
FATHER ANTHOOTTY @ ABDURAHIMAN
S/O.LATE MOOSA, AGED 71 YEARS, RASHEEDA MANZIL, KADAMBUR ROAD,
EDAKKAD(P.O), KANNUR TALUK.**

**BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA**

RESPONDENTS/PETITIONERS:

- 1. SUFAIJA T.V, AGED 26 YEARS,
D/O. UMMER, ROULA MANZIL, VELLAPPARA,
VATTAKKULAM.P.O, ATTADAPPA, EDAKKAD AMSOM,
KANNUR-670 006.**
- 2. AYISHA ZOOMI (MINOR), AGED 4 ½ YEARS
D/O.FAISAL, REPRESENTED BY HER MOTHER
GUARDIAN AND NEXT FRIEND SUFAIJA.T.V., 1ST RESPONDENT.**

R1&2 BY ADV. SRI.V.RAMKUMAR NAMBIAR

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
20-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.111 of 2015

Dated this the 20th day of May, 2015.

O R D E R

1.The revision petitioner is the counter petitioner in M.C.No.148/2013 on the files of the Family Court, Thalassery and the respondents are the petitioners therein. This revision petition is filed challenging the order passed under Section 125 of the Code of Criminal Procedure directing the revision petitioner to pay monthly maintenance allowance at the rates of Rs.4,000/- to the first respondent and Rs.3,000/- to the second respondent. The main ground projected in this revision petition is that even though the father of the petitioner was allowed to contest the matter by order dated 1/1/2014, without giving a breathing time, the petitioner was declared ex parte on 31/1/2014.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.
3. The sum and substance of the arguments advanced by the learned counsel for the revision petitioner is that no opportunity had been given to the petitioner to defend the case and the speedy disposal of the case caused miscarriage of justice. Going by the impugned order, it could be seen that on 31/1/2014, when the case was taken up for hearing, the revision petitioner was absent and there was no representation for him. In such circumstances, I cannot find fault with the court below for setting him ex parte and passing the order under challenge.
4. But, when substantial justice and technical considerations are pitted against each other, the substantial justice must be given preference rather than disposal on technical considerations. In this

view of the matter, the revision petitioner can be given a further opportunity to contest the case on merits, on terms. Consequently, the impugned order is set aside.

5. The revision petitioner shall pay a cost of Rs.10,000/- (Rupees Ten thousand only) to the first respondent within a period of one month from today and produce the receipt thereof before the court below. On compliance of the said condition within time the court below shall restore the M.C. on the files and proceed in accordance with law and dispose of the same within a period of three months from today. The parties shall appear before the court below on 25/6/2015.

This R.P(FC). is allowed.

Sd/-
K. HARILAL, JUDGE

okb.