

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

RPFC.No. 114 of 2015 ()

MC 268/2009 of FAMILY COURT,ERNAKULAM

REVISION PETITIONER/RESPONDENT:

RUSSEL JOY, AGED 51 YEARS
ADVOCATE, S/O.VARGHESE, KATTITHARA HOUSE
PERINGALA, KUNNATHUNADU VILLAGE
NOW RESIDING AT NAZERATH, ALUVA-1.

BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR
SMT.K.M.RAMYA
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER

RESPONDENTS/PETITIONER & FORMAL PARTY:

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1. GEETHA GILBERT, AGED 48 YEARS
D/O.LATE GILBERT, M.G.VILLA, PERUMANOOR
THEVARA, ERNAKULAM VILLAGE, KANAYANNUR TALUK
682318.
 2. STATE OF KERALA TO BE REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.

THE 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AS PER
ORDER DT.1.4.2015 IN R P(FC)114/2015

R1 BY ADV. SRI.K.NIRMALAN
R1 BY ADV. SRI.A.RAJASIMHAN

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

R.P.(F.C.)No.114 of 2015

Dated this the 17th day of September 2015

O R D E R

The revision petitioner is the respondent in M.C. No.268 of 2009 of Family Court, Ernakulam, who in this revision petition challenges the order passed by court below directing him to pay Rs.3,000/- per month to the petitioner therein from the date of order, towards her maintenance. It was further directed by the court below to pay arrears of maintenance from the date of M.C. till the date of award at the rate of Rs.2,000/- per month. Aggrieved by the said order, this revision petition has been

filed.

2. Heard.

3. The marriage between the revision petitioner and the respondent is not disputed. The respondent herein would contend that the revision petitioner deserted her on 26.12.1994 and thereafter, he did not maintain her. According to the respondent, she is not having any employment. She is also having no source of money for her maintenance. The revision petitioner contended that the respondent is a teacher working in Government Higher Secondary School, Puthenthode, earning money for her maintenance. She is a post graduate teacher having B.Ed qualification.

4. Before the court below, the revision petitioner did

not adduce any oral evidence. However, Ext.B1 was marked on the side of the revision petitioner. Respondent herein was examined as PW1.

5. After evaluating the evidence, the court below found that the revision petitioner could not establish that the respondent herein was working as a teacher in the Government Higher Second School, Puthenthode. The revision petitioner produced Ext.B1 certificate before the court below showing that the respondent was working as a teacher in the Government Higher Secondary School, Puthenthode. The grievance of the revision petitioner is that even though the revision petitioner produced the list of witness on 28.11.2014 before the court below, praying for issuing summons to the witness, the court below did not

incline to issue summons to the witness and thereby, the revision petitioner was denied of his opportunity to prove the income and the employment of the respondent herein. The records would show that the revision petitioner submitted witness list with a prayer to issue summons. The proceedings of the court below would show that the summons to the witness was dispensed with. No reason was stated by the court as to why the summons to the witness was dispensed with. Ext.B1 certificate was stated to have been issued by that witness. Having gone through the relevant inputs, I am of the view that the court below should have granted an opportunity to the revision petitioner to examine his witness before passing the impugned order. Since the order impugned was passed

without affording opportunity to the revision petitioner to examine his witness, the order impugned cannot be sustained.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remanded to the court below, for fresh consideration of the matter in accordance with law, as expeditiously as possible, affording reasonable opportunity to both sides to adduce evidence.

The revision petitioner shall appear before the court below on 20.10.2015 without further notice.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge