

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. 122 of 2015

AGAINST THE ORDER OF THE FAMILY COURT, KANNUR, DATED THE
22ND DAY OF DECEMBER, 2014 IN CMP NO.1020 OF 2013 IN
M.C.NO.434 OF 2011.

REVISION PETITIONER(S)/PETITIONERS:

1. FABEENA.P.V.,
P.V.HOUSE, PUTHIYANGADI, P.O.MADAYI,
KANNUR TALUK, PIN 670304.

2. MOHAMMED ASHIF (MINOR),
REPRESENTED BY THE GUARDIAN MOTHER- 1ST
PETITIONER - FABEENA P.V.,
P.V.HOUSE, PUTHIYANGADI, P.O.MADAYI,
KANNUR TALUK, PIN-670304.

3. MOHAMMED AKMAL (MINOR),
REPRESENTED BY THE GUARDIAN MOTHER-
1ST PETITIONER - FABEENA.P.V.,
P.V.HOUSE, PUTHIYANGADI, P.O.MADAYI
KANNUR TALUK, PIN 670304.

BY ADVS.SRI.K.M.MOHAMMED KUNHI
SMT.RUKHIYABI MOHD KUNHI

RESPONDENT(S)/RESPONDENT:

E.N.ASHRAF,
S/O.LATE S.T.P.KHADER HAJI, ABIDA MANZIL,
ERIPURAM, MUTTOM P.O., MADAYI-670304.

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

K. HARILAL, J.

R.P.(FC) No.122 of 2015

Dated this the 20th day of May, 2015

ORDER

The revision petitioners are the petitioners in C.M.P. No.1020 of 2013 in M.C.No.434 of 2011 on the files of the Family Court, Kannur. The above C.M.P. was filed under Sec.128 of the Code of Criminal Procedure for recovery of the maintenance arrear from 8/12/2011 to 7/12/2013. On 30/10/2014, the case was adjourned for service of notice on the opposite party by affixture of notice at his house and the court was awaiting for return of notice on 18/11/2014. According to the petitioners, the 1st petitioner was advised that since it was awaiting affixture, no batta needs to be paid. But, on 22/12/2014, the court below dismissed the C.M.P. without giving an opportunity to

the petitioners to pay batta. This is the grievance projected in this revision petition.

2. Heard the learned counsel for the petitioners.

3. According to the petitioners, they were promptly and diligently conducting the case. As rightly submitted by the learned counsel for the petitioners, even though batta was not paid in time, no further opportunity had been given to pay the batta. It is pertinent to note that the petitioners were not required to be present on 22/12/2014. In such circumstances, the court below could have granted one more opportunity to the petitioners to pay the batta.

4. The right of maintenance provided under Sec.125 of the Cr.P.C. is a measure of social justice extended to women and children and the object is to prevent vagrancy and destitution. That apart, when substantial justice and technical considerations are pitted against each other, substantial justice must be given priority rather than disposal on technical

considerations. In that view of the matter, I am inclined to allow the petitioners to proceed with the above C.M.P.

5. Consequently, the impugned order will stand set aside. The court below is directed to restore the C.M.P. on the files and proceed in accordance with law. The 1st petitioner shall be present before the court below on 8/6/2015 and batta shall be paid on that day itself.

This revision petition is accordingly allowed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge