

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

RPFC.No. 127 of 2015 ()

CMP NO.1112/2014 IN MC 1290/2010 of FAMILY COURT, TIRUR

PETITIONER/PETITIONER/RESPONDENT:

MUNEER, AGED 32 YEARS

S/O.MOIDEENKUTTY, MUNDEKKAT HOUSE, ANNARA SOUTH
TIRUR TALUK, MALAPPURAM DISTRICT

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENT/ RESPONDENT/PETITIONER:

SHAHIDA, AGED 26 YEARS

D/O.SAIDALAVI, CHEERAMKULANGARA HOUSE,
THEYYALA P.O, VELLIYAMBURAM, TIRUR TALUK,
MALAPPURAM DISTRICT - 677 101.

BY ADV. SRI.JAMSHEED HAFIZ

THIS REV.PETITION (FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 29-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

STU

K.HARILAL, J.

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R.P.(FC) No.127 of 2015

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Dated this the 29th day of June, 2015

ORDER

The petitioner is the petitioner in CMP No.1112/14 in CMP Nos.476/14 and 477/14 in M.C.No.1290/10 of the Family Court, Tirur. The above M.C was filed by the respondent herein for maintenance from the petitioner under Section 125 of the Code of Criminal Procedure. When the matter was posted for hearing, the petitioner failed to appear before the court and he was set ex parte and the ex parte order was passed directing him to pay maintenance allowance @ ₹5,000/- to the respondent. Aggrieved by the said order, the petitioner filed CMP No.477/14 to set aside the ex parte order and CMP No.476/14 to condone the delay in filing CMP No.477/14. The above petitions were heard together and allowed on condition that the petitioner shall deposit entire arrears due

to the respondent. Thereafter, the petitioner filed CMP Nos.1110/14 and 1111/14 in CMP Nos.476/14 and 477/14 seeking modification of the order passed in CMP Nos.476/14 and 477/14. The said application was allowed on condition that the petitioner deposits interim maintenance amount of ₹2,000/- per month up to the alleged remarriage of the respondent. The order passed in CMP Nos. 476/14 and 477/14 are modified to that effect with a direction to pay interim maintenance arrears within one month. Thereafter, the petitioner again filed CMP 1112/14 in CMP Nos.476/14 and 477/14 seeking review of the order passed in CMP No.1110/14. This application was dismissed on the ground that though CMP Nos.1110/14 and 1111/14 were allowed on condition, the petitioner has not complied the said condition. This order is again under challenge in this revision petition.

2. Going by the impugned order, it is seen that the main ground under which the ex parte order was sought to

be set aside is that the respondent is re-married to another person and thereby she is not entitled to get maintenance allowance from the revision petitioner, after re-marriage. The court below considering that ground, modified the impugned order and directed the revision petitioner to deposit the interim maintenance amount of ₹2,000/- per month up to the date of the alleged re-marriage of the respondent and granted one month's time to pay the interim maintenance arrear. But the revision petitioner had not complied the said order. In that context, the court below is justified in dismissing the application for review filed under Sec.151 Order 47 Rule 1 of the Code of Civil Procedure. I do not find any fault against the court below in dismissing C.M.P.No.1112 of 2014.

3. But, I am inclined to take a lenient view in a different perspective. Adjudication of a lis on merits is always desirable than dismissal on technicality. The revision petitioner can be given one more opportunity to

contest the matter on merits on terms.

4. Consequently, the impugned order passed in C.M.P.No.1112 of 2014 will stand set aside on compliance of the directions in the common order dated 31.1.2015 passed in C.M.P.Nos.1110 and 1111 of 2014 within a period of 45 days from today. In addition to that, the revision petitioner shall deposit ₹5,000/- (Rupees five thousand only) as cost within the said period and the same shall be given to the respondent. Needless to say, in the event of failure, the impugned order passed in CMP No.1112/2014 will stand in force.

Nan/stu

Sd/-
(K. HARILAL, JUDGE)

//True copy//

P.A to Judge

