

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

RPFC.No. 145 of 2015

AGAINST ORDER IN CRL.M.P.NO.28/15(OLD NO. CRL.
M.P.NO.97/14) IN M.C.NO.117 OF 2008 DATED 13/3/2015 ON
THE FILES OF THE FAMILY COURT, MAVELIKARA.

REVISION PETITIONER(S)/PETITIONER:

PRABHAKARAN N.,
VALIYAPARAMBIL THEKKETHIL, ERAVANKARA,
THAZHAKKARA VILLAGE, MAVELIKKARA.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S)/RESPONDENT:

T.VALSALA,
PRABHA NIVAS, ERAVANKARA, THAZHAKKRA VILLAGE,
MAVELIKKARA-690 101.

BY ADV. SRI. M. VIJESH KUMAR
ADV. SRI. S. SREEDUTT

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.145 of 2015

Dated this the 9th day of June, 2015

ORDER

The revision petitioner is the petitioner in Crl.M.P.No.28 of 2015 in M.C.No.117 of 2008 on the files of the Family Court, Mavelikara. The above M.C. was filed by the respondent herein, who is the wife of the revision petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure. The petitioner was set ex parte and the M.C. was allowed directing the revision petitioner to pay maintenance allowance at the rate of ₹1,500/- per mensem to the respondent and ₹1,000/- per mensem to her son. Aggrieved by the ex parte order, the revision petitioner filed the above Crl. M.P. for setting

aside the ex parte order dated 25/8/2009.

2. The respondent seriously opposed the said application to set aside the ex parte order. The above application was dismissed on a finding that the order granting maintenance was passed on 25/8/2009 and the petition to set aside the ex parte order in the M.C. was filed on 4/8/2014. There was a long delay of more than 5 years in filing the application. The legality of this order is under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent. Both counsel advanced arguments in support of their respective contentions raised in the Crl.M.P.

4. Going by the impugned order, apparently, it is seen that there was an inordinate delay in filing the application to set aside the ex parte order. The M.C. was filed on 29/8/2008 and the order granting maintenance was passed on 25/8/2009. The petition

to set aside the ex parte order in the M.C. was filed on 4/8/2014. In view of the inordinate delay in filing the application, I do not find any fault with the impugned order under challenge.

5. When substantial justice and technical considerations are pitted against each other, substantial justice deserves to be preferred rather than disposal on technicality. The adjudication of lis on merits is always desirable than disposal on technicality. In this view of the matter, the petitioner is given one more opportunity to contest the M.C. on merits, on terms.

6. The impugned order will stand set aside on condition that the petitioner deposits the entire arrear with ₹5,000/- (Rupees five thousand only) as cost of this litigation, within a period of forty five days from today. If the petitioner deposits the said arrear, within the time, the respondent is allowed to realise the said amount from the court. In case the petitioner

fails to deposit the said amount within forty five days, the impugned order will stand in force and the respondent will be at liberty to enforce the order passed in the M.C. On compliance of the said condition, the Family Court shall restore the complaint on the files and proceed in accordance with law. The respondent is allowed to amend the petition so as to claim enhanced quantum of maintenance allowance, in accordance with their present needs, and in that case, the petitioner is allowed to file an objection to the amended petition. The M.C. will be disposed of within a period of four months from today.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge