

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

RPFC.No. 147 of 2015

AGAINST THE ORDER IN MC 151/2013 of FAMILY COURT,
PALAKKAD, DATED 24/2/2015.

REVISION PETITIONER(S)/RESPONDENT:

SATHEESHKUMAR @ KUTTAN, AGED 39 YEARS,
S/O.RAGHAVANEZHUTHACHAN,
UNDIKAL HOUSE, ALAYAKULAMBU,
NEAR GOVERNMENT AYURVEDA HOSPITAL,
CHELAKODE POST,
THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/PETITIONER:

1. SUNITHA, AGED 32 YEARS,
D/O.LATE MANIYANEZHUTHACHAN, MANNINGAL VEEDU,
MANAPADAM POST, PUDUKODE, ALATHUR TALUK,
THRISSUR, 680001.

2. SRUTHI, AGED 10 YEARS,
(MINOR), D/O.SUNITHA,
REPRESENTED BY MOTHER AND GUARDIAN SUNITHA,
MANAPADAM POST, PUDUKODE, ALATHUR TALUK,
THRISSUR, 680001.

3. SREYA, AGED 7 YEARS,
(MINOR), D/O.SUNITHA,
REPRESENTED BY MOTHER AND GUARDIAN SUNITHA,
MANAPADAM POST, PUDUKODE, ALATHUR TALUK,
THRISSUR, 680001.

4. SURYA, AGED 2 YEARS,
(MINOR), D/O.SUNITHA
REPRESENTED BY MOTHER AND GURARDIAN SUNITHA,
MANAPADAM POST, PUDUKODE, ALATHUR TALUK,
THRISSUR, 680001.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 03-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.147 of 2015

Dated this the 3rd day of June, 2015

ORDER

The revision petitioner is the respondent in M.C.No.151 of 2013 on the files of the Family Court, Palakkad. The above M.C. was filed by the respondents herein, who are the wife and three children of the revision petitioner, claiming maintenance allowance under Sec.125 of the Code of Criminal Procedure. He was absent and set ex parte. Thereafter, the court below passed an order directing the revision petitioner to pay maintenance allowance at the rate of ₹3,000/- to the 1st respondent, ₹2,000/- to the 2nd respondent, ₹1,500/- to the 3rd respondent and ₹1,000/- to the 4th respondent from the date of petition.

This order is under challenge in this revision petition.

2. The learned counsel for the revision petitioner submits that he could enter appearance before the court below, even though he has entrusted the matter to a counsel. There was no wilful negligence, default or laches on the part of the revision petitioner in not appearing before the court below. The learned counsel further urged for a further opportunity to contest the M.C. on merits.

3. Going by the impugned order, it is seen that, as submitted by the learned counsel for the revision petitioner, the petitioner was set ex parte in his absence. I do not find any fault with the court below in passing the impugned order, after setting him ex parte. But, I am inclined to take a lenient view on a different perspective.

4. When substantial justice and technical considerations are pitted against each other, substantial justice deserves to be preferred rather than disposal on technical considerations; but, at the

same time, the financial loss and hardship caused to the respondents also have to be considered.

5. Consequently, the impugned order will stand set aside and the matter will stand remitted to the court below on condition that the petitioner shall pay a cost of ₹10,000/- (Rupees Ten thousand only) to the 1st respondent and deposit ₹25,000/- before the court below and produce receipts thereof, within a period of forty five days from today. On compliance of the said condition within time, the court below shall restore the complaint on its files and dispose of the matter, after affording an opportunity to contest the matter on merits to both parties, within a period of four months. The respondents are allowed to realise the said amount of ₹25,000/- also.

This R.P.(FC) is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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//true copy// P.S. to Judge