

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

RPFC.No. 150 of 2015

AGAINST THE JUDGMENT IN MC 133/2012 of FAMILY
COURT, THRISSUR DATED 12-01-2015.

REVISION PETITIONER(S)/APPELLANT/ACCUSED:

AMBUJAKSHAN, AGED 39 YEARS,
S/O.BHASKARAN, KANJANI HOUSE, KOMBARA,
IRINJALAKKUDA P.O., PIN: 680 121.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

1. BABITHA, AGED 33 YEARS,
D/O.UNNIKRISHNAN, KOOTHUPALAKKEL HOUSE,
KONATHUKUNNU P.O., PIN: 680 123.

2. MINOR CHAMINTHA,
D/O.BABITHA, KOOTHUPALAKKEL HOUSE,
KONATHUKUNNU P.O.,
PIN: 680 123 (MINOR REPRESENTED BY MOTHER AND
GUARDIAN THE 1ST RESPONDENT BABITHA)

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 21-05-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.150 of 2015

Dated this the 21 day of May, 2015

ORDER

The legality of the entitlement of the maintenance allowance and the correctness of the quantum determined by the Family Court, Thrissur, in M.C.No.133 of 2012 are under challenge in this revision petition.

2. The petitioner is the husband of the 1st respondent as well as the father of the 2nd respondent. According to the 1st respondent, the revision petitioner neglected to maintain them and refused to pay maintenance allowance from 10/2/2010. The case filed by the petitioner for restitution of conjugal rights as O.P.No.2073 of 2010 was withdrawn by him on

21/12/2011 and subsequently he filed O.P.No.187 of 2012 seeking divorce and the same is pending. The petitioner has no case that he had paid maintenance allowance after 10/2/2010. In the above context, I find that no detailed enquiry needs to be made as to whether there are sufficient cause to reside separately without forfeiting the right to claim maintenance allowance. The filing of O.P. for divorce and the non-payment of maintenance allowance since 10/2/2010 would justify the court in finding that the respondents are entitled to get maintenance allowance from the petitioner.

3. What remains to be considered is the correctness of the quantum of maintenance allowance fixed by the court below. The 1st respondent claimed maintenance allowance at the rate of ₹6,000/- per mensem and the 2nd respondent claimed at the rate of ₹3,000/- per mensem. It has come out in evidence that the 1st respondent has no job or any source of income; whereas the petitioner was employed in Gulf

country and now he is a spray painter. According to him, at present, he is not having any such employment; but doing coolie work only. The court below observed that he has a healthy able bodied man and he can work. An able bodied man is presumed to be having sufficient earning capacity and the 'means' employed in Sec.125 of the Cr.P.C. signifies not only movable and immovable property; but also the earning capacity of an able bodied man. Absolutely there is no evidence to show that the 1st respondent is employed in a shop, as contended by the revision petitioner. 'Maintenance' includes provision for food, shelter, clothing, medical expenses and educational expenses. A husband is liable to pay maintenance allowance in accordance with the status of the wife and children and their day-to-day requirements. Steep hike in the price of essential commodities caused by inflation is a universal phenomena which does not require proof. It follows that there is a corresponding increase in the income of

every earning man, including labourers, who get wages. In this view of the matter, I find that the quantum of maintenance allowance at the rate of ₹3,500/- per mensem to the 1st respondent and ₹2,500/- per mensem to the 2nd respondent is just and proper and no interference is called for.

4. Having regard to the facts and circumstances of the case, the revision petitioner is given four months time to pay the arrear, if any, provided that half of the entire arrear shall be paid within two months and the balance shall be paid within the next two months. In the event of failure to pay the first instalment within the time specified above, this instalment facility will stand cancelled and the Family Court will be at liberty to enforce realisation of the entire arrear in lump sum.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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