

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

RPFC.No. 163 of 2015

AGAINST THE ORDER IN MC 245/2013 of FAMILY COURT,
OTTAPPALAM DATED 28-02-2015

REVISION PETITIONER(S)/PETITIONER:

ANEESHKUMAR, AGED 31 YEARS,
S/O.SWAMINATHAN, CHEMBRAVALAPPIL,
MUTHALIYAR THERUVU,
SHORNUR VILLAGE, OTTAPPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.P.JAYARAM

RESPONDENT(S)/RESPONDENT:

SREEJA.B, AGED 21 YEARS,
D/O.BABU KATHIRAVAN, CHEMBRAVALAPPIL,
SREEJA NIVAS,
MUTHALIYAR THERUVU, SHORNUR VILLAGE,
OTTAPPALAM TALUK,
PALAKKAD DISTRICT, PIN-679121.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No.163 of 2015

Dated this the 1st day of June, 2015

ORDER

The petitioner is the respondent in M.C. No.245 of 2013 on the files of the Family Court, Ottapalam. He is the husband of the respondent herein. According to the respondent, the petitioner has neglected to maintain her and refused to pay maintenance allowance since 20/6/2012 and she is residing separately due to irreconcilable matrimonial discordancy. She has no job or any source of income and thereby, she is unable to maintain herself; whereas the petitioner is working in a Company at Ernakulam and is getting ₹20,000/- per month as salary. He is also getting ₹10,000/- per month as

house rent. So, she claimed ₹8,000/- per month as maintenance allowance.

2. The petitioner admitted the marital status of the respondent; but he contended that, at the time of marriage, there was an agreement to live in the house of the respondent herself after the marriage, as she is the only daughter of her parents. Therefore, she is residing separately on mutual consent and so, she is not entitled to get maintenance allowance from the petitioner. He denied the allegation that he is getting ₹20,000/- per month as salary. According to him, he is working as Security Guard in a private company and getting ₹6,600/- per month only. It is also contended that the quantum of maintenance allowance claimed by the respondent is too exorbitant and disproportionate with his income.

3. Heard the learned counsel for the petitioner.

4. The learned counsel for the petitioner advanced arguments assailing the findings whereby

the court below found that the respondent is entitled to get maintenance allowance. So also, according to him, the quantum of maintenance allowance determined by the court below is disproportionate with the income of the petitioner.

5. The marital status of the respondent as the legally wedded wife of the petitioner is not disputed. So also, it is admitted that the respondent is residing separately in her own house with her parents. The case of the petitioner is that she is not entitled to get maintenance allowance as there was an agreement to reside in her house house, as she is the only daughter of her parents and that amounts to mutual consent to live separately and thereby, she is not entitled to get maintenance allowance. But, I am unable to accept the said argument. The mutual consent contemplated under Sec.125(5) of the Cr.P.C. is a consent to live separately. But, the agreement arrived at by the parties in the instant case is an agreement to live

jointly in her house as she is the only daughter of her parents. No way, at any stretch of imagination, it can be believed that, at the time of marriage, the spouses entered into an agreement to live separately and it can never be so. It may be an agreement to live jointly in the house of the petitioner. Therefore, the petitioner cannot claim exemption under sub-section (5) of Sec.125 of the Cr.P.C. In the above view, the court below is justified in finding that the respondent is entitled to get maintenance allowance.

6. Coming to the correctness of the quantum of maintenance allowance. The petitioner himself admitted that he is working as Security Guard in a private firm. Even though Ext.D1 salary certificate has been produced, that cannot be admitted as such in evidence as the same was issued by a private firm and the person who has issued the certificate was not examined. The petitioner is an able bodied man and he has no case that he is suffering from any kind of

physical incapacity. So, if the present income is not sufficient, it is for him to find out a better job so as to provide maintenance allowance to his wife. However, even though ₹6,600/- per month as salary is taken at its face value, nothing wrong in providing half of the said amount to his wife, particularly when they have no issues.

7. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below, at the rate of ₹3,000/- per month, is just and reasonable and no interference is called for under the revisional jurisdiction.

8. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of this case, the revision petitioner is given six months time to pay the arrear, provided that half of the entire arrear shall be paid within three months from today and the remaining balance shall be paid within the next three

months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This revision petition is dismissed.

Sd/-

(K. HARILAL, JUDGE)

Nan/

//true copy//

P.S. to Judge