

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

RPFC.No. 178 of 2015 ()

MC 340/2013 of FAMILY COURT, KANNUR DATED 12-11-2014

REVISION PETITIONER(S)/PETITIONER:

1. AFNA K, AGED 23 YEARS
D/O.KHALEEL, KHALASI HOUSE, P O KANNUR CITY
KANNUR 670 003

2. SHAZA, AGED 2 YEARS
D/O.RUNEEED, REP BY MOTHER AFNA.K -DO-

BY ADVS.SRI.H.HAMZA RAWTHER
SRI.V.K.PEER MOHAMED KHAN

RESPONDENT(S)/RESPONDENT :

RUNEEED P.M., AGED 29 YEARS
S/O.M.K.KAREEM, PALLIMOOPAN HOUSE, THAYATHERU
KANNUR 670 002

BY ADVS. SRI.G.SREEKUMAR (CHELUR)
SRI.K.ASHIS

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 08-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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R.P.(F.C) No.178 of 2015

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Dated this the 8th day of June, 2015

ORDER

The revision petitioners are the petitioners in M.C.No.340/2013 on the files of the Family Court, Kannur. 1st petitioner is the wife and 2nd petitioner is the child born in the said wedlock. According to the 1st petitioner, the respondent has neglected to maintain and refused to pay maintenance allowance to them from 03.04.2011 onwards. The 1st petitioner has no job or any sources of income and she is unable to maintain herself and the 2nd petitioner. But, the respondent is a tailor by profession and he is getting ₹20,000/- per month. The petitioners have claimed maintenance allowance @ ₹5,000/- and ₹3,000/- respectively. The respondent admitted the marital status of the 1st petitioner and the paternity of the 2nd petitioner. According to him, the 1st petitioner is residing separately on

the basis of a mutual consent entered in an agreement executed between them and thereby, she is not entitled to get maintenance allowance under Section 125(4) of the Code of Criminal Procedure. He denied the allegation that he is a tailor by profession; but according to him, he is doing the job of fixing button to the dresses and thereby, he is getting a meagre amount only as daily wages. It is also contended that the 1st petitioner is a technically qualified person in fashion designing and she is doing the job and earning more than ₹10,000/- per month. After considering the rival pleas and the evidence on record, the court below rejected the maintenance claim of the 1st petitioner and granted maintenance allowance to the 2nd petitioner @ ₹ 2,000/-. The legality of the findings whereby the court below rejected the claim of the 1st petitioner and the correctness of the quantum of maintenance allowance fixed to the 2nd petitioner are under challenge in this revision petition.

2. Heard the learned counsel for the petitioners. The learned counsel for the petitioners advanced arguments assailing the findings whereby the court below rejected the claim of the 1st petitioner on the basis of an alleged mutual consent. So also, the learned counsel contended that the quantum of maintenance allowance determined to the 2nd petitioner is inadequate and disproportionate with the income of the respondent.

3. Going by the impugned common judgment, it is seen that the marital status of the 1st petitioner and paternity of the 2nd petitioner are not disputed by the respondent. It follows that he is liable to pay maintenance allowance to the petitioners under Section 125 of the Code of Criminal Procedure. But, he sought for exemption under Section 125(4) contending that now they are residing separately on the basis of mutual consent entered in Ext.B1 agreement executed between them. It is seen that the learned Judge has meticulously evaluated the terms and

conditions in Ext.B1 agreement. The 1st petitioner has no case that Ext.B1 is a fabricated document. It is the case of the 1st petitioner that the terms of payment has not been effected so far as stated in the agreement. In Ext.B1 agreement, it is mentioned that there was some differences of opinion between the 1st petitioner and the respondent in their married life and owing to these differences of opinion, both of them have decided to stay separately and the 1st petitioner had agreed to terminate the marital relationship on account of the conditions incorporated in Ext.B1. As per Ext.B1, the total compensation to be paid to the 1st petitioner as divorced wife is quantified as ₹4,00,000/-. According to the 1st petitioner, the said amount has not been paid completely so far. Therefore, it cannot be said that their separate residence was on the basis of Ext.B1 agreement. But, I am unable to countenance with the said arguments advanced by the learned counsel for the petitioners.

4. It has come out in evidence that some amount had been paid and the amount has not been fully paid as agreed by the respondent. If that be so, the remedy opened to the 1st petitioner is to seek specific performance of the terms of contract in the agreement and she cannot unilaterally wriggle out from the terms and conditions entered in the agreement on the failure of the respondent to certain extent to perform his part in full. However, now they are living separately on the basis of terms and conditions in Ext.B1 agreement and the 1st petitioner wants the performance of the remaining part of the offer made by the respondent. In this context, I find that Ext.B1 agreement is still in force and the 1st petitioner cannot wriggle out from the terms and conditions of the said agreement. In this analysis, I find that there is no illegality in the findings whereby the courts below rejected the maintenance claim of the 1st petitioner on the basis of mutual consent arrived at between the 1st petitioner and the respondent.

5. Coming to the quantum of maintenance allowance fixed by the courts below to the 2nd petitioner, it is the specific case of the 1st petitioner that the respondent is a tailor by profession and he is getting ₹20,000/- per month. The respondent himself admitted that he is working in a tailoring shop. But, according to him, he is doing the job of fixing button to the dresses. However, the respondent has no case that he is physically disabled or incapacitated to do work so as to earn for the livelihood of his family. A physically healthy and able bodied man is presumed to be having sufficient earning capacity to earn for the livelihood of his family. Father is liable to pay maintenance allowance to the child in accordance with the living status and day to day requirements of the child. During the period of the child is aged 3 and during the period of infancy, a considerable amount is required for the care and protection of the child.

In this view of the matter,I find that the quantum of

maintenance allowance determined by the court below is a little, inadequate and insufficient to meet the daily requirements. Consequently, the quantum of amount will stand re-fixed to ₹3,000/-. The respondent is directed to pay maintenance allowance @ ₹3,000/- per month to the 2nd petitioner from the date of petition.

The revision petition is disposed of.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge