

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

RPFC.No. 180 of 2015 ()

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AGAINST THE ORDER DATED 21-08-2014 IN MC. NO.408/2013 OF FAMILY COURT,
NEDUMANGAD.**

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REVISION PETITIONER/COUNTER PETITIONER:

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SREEKUMARAN NAIR. R.,
S/O.LATE RAGHAVAN PILLAI G., AGED 69 YEARS,
HAVING PERMANENT RESIDENCE AT CHANDRIKA, TC 6/2021,
SRA 223, MANNARATHALA LANE, VALIYAVILA,
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM,
NOW STAYING AT ROOM NO.34,
GANAPATHY ASHRAMAM OLD AGE HOME, ARAPURA ROAD,
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.AYYAPPAN SANKAR.

RESPONDENT/PETITIONER:

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S. CHANDRIKA KUMARI, AGED 57 YEARS,
W/O.SREEKUMARAN NAIR, RESIDING AT CHANDRIKA, TC.6/2021,
SRA.223, MANNARATHALA LANE, VALIYAVILA,
VATTIYOORKAVU P.O., THIRUVANANTHAPURAM-695 043.**

**BY ADVS. SMT.SREEDEVI KYLASANATH,
SRI.ACHUTH KYLAS.**

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 05-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1** COPY OF THE CERTIFICATE DATED 23/12/2014 ISSUED FROM SREE MAHAGANAPATHY SEVASHRAM (MADRAS REGIMENT VETERAN'S HOME) RUN BY INDIAN ARMY.
- ANNEXURE A2** COPY OF THE ORIGINAL PETITION IN O.P. NO.146/2013 IN FAMILY COURT, THIRUVANANTHAPURAM.
- ANNEXURE A3** COPY OF THE APPLICATION FOR MAINTENANCE FILED BY RESPONDENT IN THE FAMILY COURT, NEDUMANGAD AS MC. NO.408/2013.
- ANNEXURE A4** COPY OF THE OBJECTION FILED BY REVISION PETITIONER TO ANNEXURE A3.
- ANNEXURE A5** COPIES OF MONEY ORDER RECEIPTS.
- ANNEXURE A6** COPY OF THE PETITION FILED BY RESPONDENT BEFORE WOMEN'S COMMISSION.
- ANNEXURE A7** COPY OF THE CHIEF AFFIDAVIT SWORN BY REVISION PETITIONER AS CPW1 IN M.C. NO.408/2013 IN FAMILY COURT, NEDUMANGAD.
- ANNEXURE A8** COPIES OF RECEIPTS DATED 10/12/2014 AND 14/01/2015.
- ANNEXURE A9** COPY OF THE CERTIFICATE DATED 18/03/2015 ISSUED FROM SREE CHITRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCE & TECHNOLOGY (AN INSTITUTE OF NATIONAL IMPORTANCE UNDER GOVERNMENT OF INDIA), MEDICAL COLLEGE, THIRUVANANTHAPURAM.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K.HARILAL, J.

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R.P.(F.C) No. 180 of 2015

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Dated this the 5th day of June, 2015

ORDER

The revision petitioner is the respondent in M.C. No. 408 of 2013 on the files of the Family Court, Nedumangad, filed by the respondent herein, who is the wife of the petitioner, claiming maintenance allowance, under Section 125 of the Code of Criminal Procedure, from the petitioner. According to the respondent, the petitioner wilfully refused and neglected to provide maintenance allowance to the petitioner from June, 2012 onwards. She has no job or any sources of income; whereas the petitioner is a retired Government Employee, getting monthly pension of ₹ 26,000/-. The respondent claimed Rs. 8,000/- per month.

2. The petitioner admitted the marital status of the respondent; but denied all the allegations in the petition.

According to him, the respondent herein pushed out him from the home and thereafter, he was constrained to seek shelter in an asylum. It is the case of the petitioner that the respondent is not entitled to get maintenance allowance as he was ejected from the house by the respondent on her own volition. It is also contended that the quantum of maintenance allowance determined by the court below is excessive and disproportionate with his income.

3. Heard the learned counsel for the petitioner and learned counsel for the respondent.

4. Both counsel advanced arguments in support of their contentions raised before the trial court. The legality of the entitlement of maintenance allowance is mainly challenged in this revision petition. The learned counsel for the petitioner vehemently submitted that since he was pushed out from the house where they resided together as husband and wife, the respondent is not entitled to get maintenance allowance from him.

5. Going by the impugned order, it is seen that the petitioner has no case that he has been paying maintenance allowance to the respondent. Though, he contended that he was pushed out from the house by the respondent, no evidence had been adduced to substantiate the said contention except the oral assertion made by the petitioner. The evidence which would prove the grounds under sub Section 4 of Section 125 Cr.P.C is not available on record. So, I find that there is no illegality in the finding that the respondent is entitled to get maintenance allowance from the petitioner.

6. Coming to the correctness of quantum of maintenance allowance, the petitioner admitted that he is a pensioner. According to the respondent, the petitioner, as a pensioner, who was employed in K.S.E.B., getting ₹26,000/- per month as pension. No evidence has been adduced by him to show his exact pension. The quantum of pension is a fact which lies exclusively within the knowledge of the

pensioner alone and it was for him to adduce the relevant pension certificate to prove his exact income. In the absence of such evidence, an adverse inference can be drawn against the petitioner under Section 114(g) of the Indian Evidence Act. Had it been produced that would have shown the exact income of the petitioner?

7. The respondent is aged 55 years. Maintenance includes provision for food, shelter, clothing, medical attendance etc. In the absence of any evidence to show any kind of sources of income of the respondent, the court below is justified in fixing quantum of maintenance allowance at the rate of Rs. 6,000/- per month, in view of the living status and day to day requirements of the respondent. I do not find any kind of illegality or impropriety in the impugned order under challenge.

8. The learned counsel for the petitioner urged for granting some time to pay the arrear. Having regard to the facts and circumstances of the case, the revision petitioner

is given four months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within a period of two months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment within the specified time, this facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

9. Warrant, if any issued, in execution of the impugned order, shall be kept in abeyance for a period of two months and if the petitioner pays the first instalment within the specified time, it will stand extended by two more months.

The revision petition is disposed of accordingly.

**Sd/-
K.HARILAL, JUDGE.**

stu

//True copy//

P.Ato Judge