

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. 185 of 2015

MC 106/2013 of FAMILY COURT, TIRUR

...

REVISION PETITIONER(S)/RESPONDENT:

MANSOOR ALI, AGED 39 YEARS,
S/O.BAPPUTTY, OTHALAKATTIL OTTAYIL HOUSE,
PAMBAN ROAD,VELIYAMKODE P.O.,
PONNANI, MALAPPURAM-679579.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENT(S)/PETITIONERS:

1. RASEENA, AGED 25 YEARS,
D/O.PILAKKAVEETIL KOTTILINGAL ABU,
VELIYAMKODE AMSOM DESOM, VELIYAMKODE P.O., PONNANI,
MALAPPURAM-679579.

2. ADIL, AGED 7 YEARS (MINOR),
REPRESENTED BY MOTHER/1ST RESPONDENT RASEENA,
D/O.PILAKKAVEETIL KOTTILINGAL ABU,
VELIYAMKODE AMSOM DESOM, VELIYAMKODE P.O., PONNANI,
MALAPPURAM-679579.

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

OKB

K.HARILAL, J.

R.P(FC). No.185 of 2015

Dated this the 5th day of June, 2015.

O R D E R

Revision petitioner is the respondent in M.C. No.106/13 of Family Court, Tirur. The above M.C. was filed by the respondents, who are the wife and child of the petitioner claiming maintenance under Section 125 of the Code of Criminal Procedure. According to the first respondent, she has no job or income and she is unable to maintain herself and the second respondent school going minor child; whereas the revision petitioner is working abroad and conducting business at the native place and earning a total sum of Rs.60,000/- per month. Revision petitioner admitted the marital status of the first respondent and the paternity of the second respondent. But he resisted claim for maintenance on the reason that the respondents are residing separately without any

reason. He has produced Ext.R3 bank statement to show that he has paid substantial amount to the respondents after 2012 as their maintenance allowance. It is also contended that the quantum of maintenance allowance determined by the court below is highly excessive and disproportionate with his income.

2. Heard both sides. The learned counsel for the revision petitioner advanced arguments assailing the findings by which the court below passed the impugned order. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. Marital status of the first respondent and paternity of the second respondent are not disputed. Though the revision petitioner resisted the claim for maintenance allowance on the reason that there is no sufficient ground to live separately, the first respondent narrated the allegations of cruelty and harassment. It is her specific case that the revision

petitioner has misused her gold ornaments and he has not even cared to meet the expenses incurred for the delivery of the second respondent.

4. The averments in the petition shows that the revision petitioner totally neglected the respondents. The first respondent was examined as P.W.1 and P.Ws. 2 to 4 were also examined to prove the allegations in the petition. After analysing the evidence on record, the learned Family Court Judge arrived at a finding that she is entitled to get maintenance allowance from the revision petitioner. I do not find any illegality or impropriety in the findings of the court below.

5. Coming to the quantum of maintenance allowance, it is the case of the first respondent that the revision petitioner is working abroad. He contended that now he is not working abroad, but running a mobile repairing shop only. The revision petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. Maintenance provided under Section

125 of the Cr.P.C. signifies not only income from movable or immovable property, but also earning capacity of an able bodied man to do work so as to earn livelihood for his family. In the absence of evidence to show the incapacity or disability to earn, the revision petitioner is liable to pay maintenance allowance in accordance with the standard of life, status and the daily needs of the respondents. Means includes provision for food, shelter, clothing, medical attendance, educational expenses, etc. In this view of the matter, I find that the quantum of maintenance allowance determined by the court below is just and proper warranting no interference under revisional jurisdiction.

6. The learned counsel for the revision petitioner urged for some time to pay the arrear. Having regard to the facts and circumstances of the case, the revision petitioner is given five months time to pay the arrear, provided that Rs.39,000/- shall be paid within first 2 months and the entire balance shall be

paid within the next 3 months. In the event of failure to pay the first instalment in time, this instalment facility will stand automatically vacated and the first respondent will be at liberty to realise the entire arrear in lump sum, in accordance with law.

This R.P(FC). is dismissed.

Sd/–
K. HARILAL, JUDGE

okb.