

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

RPFC.No. 202 of 2015 ()

MC 385/2011 of FAMILY COURT, PALAKKAD, DATED 25-10-2013

PETITIONER/RESPONDENT/PETITIONER:

RAHMATHULLA, AGED 41 YEARS
S/O. K.M. HANEEFA, PETTAKAD PAMBAMPALLAM.P.O.
PUDUSSERY EAST VILLAGE, PALAKKAD.

BY ADVS.SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS/PETITIONERS/RESPONDENTS :

1. FAIROJA, AGED 34 YEARS
ROJA NIVAS, MATTUMANTHA, NALLEPPILLY.P.O.
CHITTUR TALUK, PALAKKAD-678533.

2. FAYAS,, AGED 15 YEARS
S/O. FAIROJA, ROJA NIVAS, MATTUMANTHA
NALLEPPILLY.P.O., CHITTUR TALUK
PALAKKAD-678533.(REPRESENTED BY MOTHER AND GUARDIAN
THE 1ST RESPONDENT)

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

A1 : COPIES OF THE MONEY ORDER RECEIPTS AND DETAILS OF
PAYMENT.

A2 : COPY OF THE MEDICAL CERTIFICATE DATED 14.7.2014.

RESPONDENTS' ANNEXURES : NIL

//True copy//

P.A to Judge

STU

K.HARILAL, J.

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R.P.(F.C) No.202 of 2015

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Dated this the 23rd day of June, 2015

ORDER

The petitioner is the respondent in M.C No.385/2011 on the files of the Family Court, Palakkad, filed by the respondents herein, who are the wife and minor son of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the respondents, the 1st respondent is the legally wedded wife of the petitioner and the 2nd respondent is the child born in that wedlock. The petitioner willfully neglected to maintain them and refused to pay maintenance allowance from 2011 onwards. The 1st respondent is an Anganwadi worker and is getting Rs.2,000 per month only. She is unable to maintain herself and the 2nd respondent with that amount; whereas the petitioner is a Gulf returnee, doing painting work and he is getting Rs.15,000/- per month. He is also having

agricultural land and thereby, getting Rs.20,000/- per month. The 1st respondent claimed Rs.3000/- and the 2nd respondent claimed Rs.2000/- per month as monthly maintenance allowance.

2. The petitioner admitted the marital status of the 1st respondent and the paternity of the 2nd respondent. But, according to him, he has pronounced Talaq on 14/9/2011. It is also contended that the quantum of maintenance claimed is excessive and disproportionate with his income. He denied the allegation that he is getting Rs.15,000/- as a painting contractor and having agricultural land getting Rs. 20,000/- per month. According to him, he is a helper to a painting contractor only. Though he filed an objection resisting the claim raised by the respondents, he was set ex parte and he could not adduce evidence in trial. After considering the evidence adduced by the respondents, the court below directed the petitioner to pay maintenance allowance at the rate of Rs. 2,000/- each to the

respondents. The entitlement of maintenance allowance and the quantum of maintenance fixed by the court below are under challenge in this revision petition.

3. The learned counsel for the petitioner contends that the impugned order under challenge is an ex parte order and he could not contest the matter on merits. As he could not contest the claim on merits, the learned counsel further prayed for another opportunity to contest the matter on merits by adducing evidence.

4. Adjudication of lis on merits is always desirable than disposal on technicalities. But, at the same time, the hardship that may be caused to the opposite party due to laches from the petitioner also deserves to be considered. The right of maintenance, under Section 125 of the Code of Criminal Procedure, is a social measure to prevent vagrancy and destitution. In the above view of the matter, the petitioner can be given an opportunity to contest the matter on merits, provided that, he must deposit entire

arrear of maintenance due under the impugned order and the respondents will be allowed to realise the said amount from the Court.

5. In the result, the impugned order will stand set aside on condition that the petitioner deposits entire arrear due under the impugned order to the respondents till today within a period of 2 months from today. On compliance of the said condition, the Court below shall restore the M.C on the files and dispose of the same within a period of '6' months from today, after providing an opportunity to adduce evidence to both parties. In case of failure, the impugned order will stand in force and the respondents will be at liberty to execute the same. The respondents are allowed to realise the entire arrear amount to be deposited by the petitioner in compliance with the above condition.

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

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