

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

RPFC.No. 234 of 2015

(MC 160/2014 of FAMILY COURT, KANNUR)

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REVISION PETITIONER/RESPONDENT:

SIVADASAN, AGED 59 YEARS,
S/O.APPU, KOLLARKANDI, KANNAPURAM,
KANNUR DISTRICT.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENT/PETITIONER:

K.K.SALINI, AGED 52 YEARS,
D/O.DAMU, KIZHAKKEVEEDU, KALLIASSERY,
KANNUR-670 562.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 07-07-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

okb

K.HARILAL, J.

R.P(FC). No.234 of 2015

Dated this the 7th day of July, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.160/14, filed by the respondent herein, who is the wife of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. The petitioner is aged 58 years and the respondent is aged 52 years. Their marriage took place in the year 1980. They lived together upto 2011. They are blessed with four children and elder son is working abroad. But according to the respondent, the revision petitioner has neglected her and refused to pay maintenance allowance to her from 2011 onwards. Even though the children are aged and employed, they also neglected her and refused to pay maintenance allowance to her. She has no job or any source of

income and she is unable to maintain herself; whereas the revision petitioner is a skilled worker in a sawmill and he is getting Rs.19,000/- per month.

2. The revision petitioner admitted the marital status of the first respondent and the paternity of the four children born in the said wedlock. But he denied the allegation that he neglected them and refused to pay maintenance allowance to them from 2011 onwards. He made an allegation that in fact he was pushed out from his house and now he is residing separately. It is also contended that the quantum of maintenance allowance claimed by the respondent is excessive and disproportionate with his income. According to him, he was getting a monthly salary of Rs.15,000/- while he was working as an operator in the sawmill. Now he is only a helper in the sawmill. After considering the evidence on record, the court below directed the revision petitioner to pay maintenance allowance @ Rs.3,000/- per month. 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. The marital status of the respondent and the paternity of the children are not disputed. Though the revision petitioner denied the allegation that he had refused to pay maintenance allowance to the respondent, no evidence has been produced by him to show that he has been paying maintenance allowance since 2011. The failure on the part of the petitioner to pay maintenance allowance after 2011, is a sufficient ground to direct the petitioner to pay maintenance allowance to the respondent.

4. Coming to the correctness of the quantum of maintenance allowance, the revision petitioner admitted that he is skilled worker and he was employed as an operator in a sawmill. But, according to him, now, being a helper only in the sawmill, and as per his own admission, he is getting Rs.15,000/- per month as salary. I am of the opinion that even if the said amount is taken at its face value as his monthly income, the court below can be justified in directing the revision petitioner to pay monthly maintenance

allowance @ Rs.3,000/- to the respondent. The term 'maintenance' includes provision for food, shelter, clothing, medical attendance, etc. The revision petitioner has no case that he is physically disabled or incapacitated to do work; but he is suffering from Tuberculosis and thereby he is unable to do the work of operator. It follows that he can do other works. No medical evidence has been adduced to substantiate his loss of earning capacity or to prove that he is suffering from Tuberculosis. In the above analysis, the court below is justified in determining the quantum of maintenance allowance @ Rs.3,000/- per month. I find no reason to interfere with the order under challenge.

5. The learned counsel for the revision petitioner sought 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 half of the entire arrear shall be paid within the first two months and the remaining balance shall be paid within the next three

months. In the event of failure to pay the first instalment itself, this instalment facility will stand automatically vacated and the respondent is 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.