

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

RPFC.No. 253 of 2015 ()

AGAINST THE ORDER IN MC 286/2013 of FAMILY COURT,
NEDUMANGAD DATED 27-08-2014

REVISION PETITIONER(S)/RESPONDENT:

SUNIL N.K., AGED 37 YEARS,
S/O.NAGOORKANNU, ASUMA MANZIL, KOPPAM,
VITHURA P.O., THOLIKKODU VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.RAM MOHAN.G.

SRI.G.P.SHINOD

SRI.MANU V.

SRI.GOVIND PADMANAABHAN

SRI.AJIT G.ANJARLEKAR

RESPONDENT(S)/PETITIONERS:

1. JASEENA, AGED 27 YEARS,
D/O.SAINA BEEVI, AMEER VILLA, THOLIKKODU,
THOLIKKODU VILLAGE, THIRUVANANTHAPURAM-695 141.

2. ADHIL MOHAMMED, AGED 5 YEARS, MINOR,
REPRESENTED BY MOTHER AND NEXT FRIEND JASEENA
AGED 27 YEARS, D/O.SAINA BEEVI,
AMEER VILLA, THOLIKKODU,
THOLIKKODU VILLAGE, THIRUVANANTHAPURAM-695141.

3. RIYA FATHIMA, AGED 3 1/2 YEARS,
MINOR, REPRESENTED BY MOTHER AND NEXT FRIEND
JASEENA, AGED 27 YEARS,
D/O.SAINA BEEVI, AMEER VILLA, THOLIKKODU,
THOLIKKODU VILLAGE, THIRUVANANTHAPURAM-695141.

R1-R3 BY ADV. SRI.M.R.SARIN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 24-07-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No.253 of 2015

Dated this the 24th day of July, 2015

ORDER

The petitioner is the respondent in M.C. No.286 of 2013 on the files of the Family Court, Nedumangad. He is the husband of the 1st respondent as well as the father of the 2nd and 3rd respondents, who are the minor children aged 4 years and 2 ½ years respectively. According to the 1st respondent, she is the legally wedded wife of the petitioner and the 2nd and 3rd respondents are the children born in the said we-lock and they are entitled to be maintained by the petitioner, without any interruption, under Sec.125 of the Cr.P.C. But the petitioner deserted them and refused to pay maintenance allowance from

September, 2012 onwards. The 1st respondent has no job or any source of income. But the petitioner is a diploma holder in Civil Engineering and Hotel Management. He is engaged in contract works with several hotels in Kerala as well as out side of Kerala. In the said contract work, he is getting a monthly income of ₹40,000/-. Hence she claimed maintenance allowance at the rate of ₹4,000/- per month and ₹3,000/- each per month to the respondents 2 and 3.

2. The petitioner admitted the relationship as claimed by the respondents; but he denied the allegation that he deserted them and refused to pay maintenance allowance. It is also denied that he is getting ₹40,000/- as monthly income; but admitted that he is a diploma holder in Civil Engineering and Hotel Management and he had been working in Gulf countries also for a long time. According to him, at present, he has no job and he is unable to pay maintenance allowance, as claimed by the

respondents, as the claim is disproportionate with his income.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents. Both counsel advanced arguments in support of the respective contentions raised in the M.C.

4. The legality of the entitlement of the maintenance allowance and the correctness of the quantum of maintenance determined by the court below is under challenge in this revision petition. The marital status of the 1st respondent and the paternity of the 2nd and 3rd respondents are not disputed. The petitioner has no case that he has been looking after the respondents after 2012 contrary to the allegations raised in the M.C. So also, there is no evidence to show that he had paid any amount towards maintenance allowance of the respondents after 2012. In the above view of the matter, the court below is justified in finding that the respondents are entitled to

get maintenance allowance.

5. Coming to the correctness of the quantum of maintenance allowance. The petitioner himself admitted that he is a diploma holder in Civil Engineering and Hotel Management and he was working abroad for a long period. He has no case that he is physically disabled or incapacitated to do work so as to earn livelihood of his wife and children. The term 'means' signify not only movable or immovable property; but also the earning capacity of an able bodied man. In the instant case, the petitioner is a technically qualified person and there is no difficulty for him to get a job, if he is desirous of getting a job or to do work so as to earn livelihood for his family. The husband is liable to pay maintenance allowance to his wife and children in accordance with their living status, standard of life and day-to-day requirements. Respondents 2 and 3 are the minor children and a substantial amount is required for their

proper care, welfare and protection. There is no evidence to show that the 1st respondent is employed or having any kind of source of income.

6. In the above view of the matter, I find that the quantum of maintenance determined by the court below at the rate of ₹4,000/- per month to the 1st respondent and ₹1,750/- per month to the 2nd respondent and ₹1,250/- per month to the 3rd respondent is just and proper and no interference is called for under the revisional jurisdiction.

7. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of this case, the revision petitioner is given five months time to pay the arrear, provided that half of the entire arrear shall be paid within two months from today and the remaining balance shall be paid within the next three months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated

and the first respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This RP(FC) is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge