

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

RPFC.No. 291 of 2015

AGAINST THE ORDER IN MC 1278/2010 of FAMILY COURT,
MALAPPURAM DATED 17-11-2014.

REVISION PETITIONER/RESPONDENT:

MUHAMMAD AMJADKHAN,
S/O. ABDUL KHADER,
REPRESENTED BY THE POWER OF ATTORNEY HOLDER
ABDUL KHADER,
PALAKKAPARAMBIL HOUSE, VILAYOOR P.O., KARINGANAD,
PALAKKAD DISTRICT.

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENTS/PETITIONERS:

1. SHAFNA,
D/O. MOIDEEN, MANNENGAL HOUSE, PULAMANTHOLE P.O.,
PERINTHALMANNA TALUK, MALAPPURAM DISTRICT,
PIN-679323.

2. JUMANA (MINOR)
D/O. MUHAMMED AMJADKHAN,
REPRESENTED BY 1ST RESONDENT MOTHER.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 21-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No. 291 of 2015

Dated this the 21st day of August, 2015

ORDER

The petitioner herein is the respondent in M.C. No.1278/2010 on the files of the Family Court, Malappuram, filed by the respondents herein, who are the wife and minor daughter of the petitioner, under Sec.125 of the Code of Criminal Procedure, claiming maintenance allowance from the petitioner. According to the 1st respondent, the petitioner neglected to maintain them and refused to pay maintenance allowance from 2010 onwards. The 1st respondent has no job or any source of income. She is unable to maintain herself and the 2nd respondent; where as the petitioner was working abroad in a Super

Market as Floor Manager. His monthly income was 4000 UAE Dhms. That apart, he has landed properties and he owns a rice mill. The 1st respondent claimed ₹7,500/- and the 2nd respondent claimed ₹5,000/- per month as maintenance allowance.

2. The petitioner resisted the claim of maintenance; but he admitted the marital status of the 1st respondent and the paternity of the 2nd respondent. According to him, the 1st respondent left the marital home with the child on her own volition and she is staying away without sufficient reason. He denied the allegation that he has landed properties and owns a rice mill; but he admitted that he was employed abroad. But, according to him, he had no permanent job. After considering the rival pleas and the evidence let in by both parties, the court below directed to petitioner to pay maintenance allowance at the rate of ₹2,500/- per month to the 1st respondent and ₹1,500/- per month to the 2nd respondent. This order is under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner.

4. As regards the legality of the entitlement of maintenance allowance, it has come out in evidence that the petitioner, after leaving the company of the 1st respondent, has contracted a second marriage and now he is living with the second wife. In that context, the 1st respondent is justified in residing separately without forfeiting her right to claim maintenance allowance.

5. Coming to the quantum of maintenance allowance, the petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. He admitted that he is working as an autorikshaw driver and is getting ₹6,000/- per month. The fact that he married again and that would show that he was sufficient income to maintain his two wives at a time. Even though his Personal Law permits him to marry more than once, up to four, he is liable to pay maintenance allowance

to his wives equally and do justice to all. An able bodied man is presumably having sufficient earning capacity. 'Maintenance' includes provision for food, shelter, clothes, medical attendance and educational expenses of the child etc. A 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.

6. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below is not excessive and does not call for any interference 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 four 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 two 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