

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

RPFC.No. 394 of 2015 ()

IN MC 308/2013 of FAMILY COURT, ATTINGAL DATED 25-06-2014

REVISION PETITIONER(S)/PETITIONER :

**MUHAMMAD HISHAM, AGED 9 YEARS
S/O. HAMSAKUNJU, JASEENA MANZIL, DECENT MUKKU
MARUTHIKUNNU P.O., NAVAikulAM, NAVAikulAM VILLAGE
CHIRAYINKEEZHU, THIRUVANANTHAPURAM, MINOR
REPRESENTED BY HIS MOTHER AND GUARDIAN, JABEENA
AGED 26 YEARS, JAZEENA MANZIL,
DECENT MUKKU, MURUTHIKUNNU P.O.
NAVAikulAM VILLAGE, CHIRAYINKEEZHU
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/RESPONDENT :

**HAMSAKUNJU, AGED 36 YEARS
S/O. MUHAMMED ISMAIL, SHYLA MANZIL, OORANKUZH
PANGODE P.O., PANGODE VILLAGE, THIRUVANANTHAPURAM
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER AND FATHER
S.MUHAMMED ISMAIL, SHYLA MANZIL, OORANKUZH
PANGODE P.O., PANGODE VILLAGE
THIRUVANANTHAPURAM DISTRICT.**

R1 BY ADV. SRI.J.R.PREM NAVAZ

R1 BY ADV. SRI.P.T.SHEEJISH

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 04-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

dlk

B.SUDHEENDRA KUMAR, J.

R.P (F.C)No. 394 of 2015

Dated this the 4th day of December, 2015

O R D E R

The revision petitioner is the petitioner in M.C.No.308/2013 on the files of the Family Court, Attingal. The petition for maintenance filed by the revision petitioner under Section 125 of Cr.P.C was dismissed by the court below. Aggrieved by the said order, this revision petition has been filed.

2. Heard both sides.

3. The court below found that an agreement was executed between the mother of the revision petitioner and the respondent agreeing to pay a maintenance of Rs.2,000/- per month to the revision petitioner up to the age of 10 years and thereafter, at the rate of Rs.3,500/- per month. The revision petitioner contended that the said amount is not sufficient to meet his expenses. He is studying in a school where an amount of Rs.12,000/- has to be paid annually. Respondent is working abroad, earning

Rs.40,000/- per month. The father of the respondent was examined before the court as RW1 and he stated that the respondent is getting only an income of Rs.7,000/- per month. No document was produced before the court below to prove the income of the respondent. The respondent also did not come to the box to give evidence. PW1 is the mother of the revision petitioner. There is no material before the court to hold that PW1 is having any job or source of income for maintaining the revision petitioner. The court below observed thus:-

“On going through the deposition of PW1 and the documents produced by her, with regard to the expenses at the school and for treatment, I am of the opinion that she has not succeeded in establishing that the parties have such a status to send the child to a private school by paying fees as stated in Ext.A2.”

The said observation of the court below, cannot be legally correct as there is no such contention even from the side of the respondent. It is not disputed that the revision petitioner is the son of the respondent. He is studying in a school for which an amount of Rs.12,000/- per year is required as fees. The child also requires money for his

food, clothes and other welfare activities. Ext.A3 would show that the revision petitioner needs money for his treatment also. It is very difficult to believe that the respondent would get only Rs.7,000/- per month from his employment abroad, in the absence of any document to that effect.

Taking into consideration of the needs of the revision petitioner and the probable income of the respondent, I am of the view that the amount agreed by the parties as per Ext.A1 is not sufficient for the maintenance of the revision petitioner. Taking into consideration of the needs of the revision petitioner, the status of the parties and the probable income of the respondent, I am of the view that the revision petitioner is entitled to get an amount of Rs.4,000/- per month towards his maintenance. For the said reason, the finding by the court below that the revision petitioner must be satisfied with the amount stated in Ext.A1 cannot be accepted.

In the result, the revision petition stands allowed as above.

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However, this order will not take away the right, if any, of the parties from approaching the court below under Section 127 of the Code, if the situation warrants.

Sd/-

B.SUDHEENDRA KUMAR, JUDGE

//True Copy//

//P.A. To Judge//

dlk/7/12/