

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

RPFC.No. 412 of 2015 ()

ORDER IN MC 100/2012 OF FAMILY COURT, MALAPPURAM

REVISION PETITIONER(S)/PETITIONER IN MC:

JUFAILA
D/O.VELLAMUNDA ALI, VELLAMUNDA HOUSE
POOKKOTTUMPADAM POST, NILAMBUR TALUK
MALAPPURAM DISTRICT

BY ADV. T.PRASAD

RESPONDENT(S)/COUNTER PETITIONER IN THE MC:

NOUSHAD ALI
S/O.PANDARAKKANDI ALAVIKUTTY, PANDARAKANDI HOUSE
PANDILAMPADAM, KARULAI POST, NILAMBUR
MALAPPURAM DISTRICT 679442

R1 BY ADV. SRI.K.M.JAMALUDHEEN
R1 BY ADV. SMT.LATHA PRABHAKARAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 17-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

R.P.(F.C.) No.412 of 2015

Dated this the 17th day of November, 2015

ORDER

The revision petitioner is the petitioner in M.C.No.100 of 2012 on the files of the Family Court, Malappuram. The revision petitioner filed the above M.C. Under Section 125 Cr.P.C. praying for maintenance. The court below dismissed the said M.C. Aggrieved by the said order, this revision petition has been filed.

2. Heard both sides.

3. The status of the petitioner as the wife of the respondent is not disputed.

4. The revision petitioner would contend that she is not having any job or avocation and she is depending on her father and brother for her livelihood. The respondent is a wholesale fish merchant, conducting cold storage business also, earning Rs.50,000/- per month. The respondent is also getting income from his landed property.

5. There are three children in the wedlock between the petitioner and the respondent. The respondent is looking after the said children.

6. Before the court below, PW1 was examined and Exts.A1 to A3 were marked for the revision petitioner. RW1 and RW2 were examined for the respondent.

7. The court below, after considering the evidence adduced by the parties, rightly found that the revision petitioner started living separately from the respondent without any justifiable cause and hence the revision petitioner is not entitled to get maintenance. The court below further found that since the revision petitioner abandoned her claim for maintenance as per an agreement, the new claim for maintenance can be filed only on establishing the change in circumstances. A Division Bench of this Court in **Rajesh R.Nair v. Meera Babu [(2013) 1 KLT 899]** held that an agreement by which a wife waives her right guaranteed under Section 125 will only be an agreement against public policy

and void. Therefore, the agreement whereby the wife has given up her right to claim maintenance from her husband, is void and hence unenforceable. Therefore, the said finding of the court below cannot be correct.

However, the finding of the court below, that there was no justifiable cause for the revision petitioner to leave the company of the revision petitioner, disentitles the revision petitioner to get maintenance. No circumstance has been brought to my notice to indicate that the order impugned suffers from any infirmity, warranting interference by this Court.

In the result, this RP(FC) stands dismissed.

Sd/-
B. SUDHEENDRA KUMAR
JUDGE

ScI/17.11.2015

True Copy

PA to Judge