

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

RPFC.No. 256 of 2014

AGAINST THE ORDER IN MC 72/2011 of FAMILY COURT,
THALASSERY DATED 28-03-2014.

REVISION PETITIONER(S)/COUNTER PETITIONER:-

BINOY, AGED 36 YEARS,
S/O.THANKACHAN, DRIVER, RESIDING AT ALUNKAL HOUSE,
OTTAPLAVU, CHUNKAKUNNU P.O.,
KOTTIYOOR AMSOM DESOM.

BY ADV. SRI.MAHESH V RAMAKRISHNAN

RESPONDENTS/PETITIONERS:-

1. SINI, AGED 32 YEARS,
W/O.BINOY.

2. ANITTA, AGED 9 YEARS,
D/O.BINOY, MINOR,
REPRESENTED BY HER NEXT FRIEND - MOTHER
ALL ARE RESIDING AT THAZHATUVEETIL,
P.O.KOLAKKAD,
KANICHAR AMSOM, DESOM.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 09-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.256 of 2014

Dated this the 9th day of June, 2015

ORDER

The legality of the entitlement of the maintenance allowance and the correctness of the quantum determined by the court below are under challenge in this R.P.(FC).

2. Heard the learned counsel for the petitioner in extenso.

3. The learned counsel for the petitioner advanced arguments challenging the findings whereby the court below directed the petitioner to pay maintenance allowance at the rate of ₹3,000/- per mensem to the 1st respondent and ₹2,000/- per mensem to the 2nd respondent.

4. The marital status of the 1st respondent as legally wedded wife and the paternity of the 2nd respondent as the daughter born in the said wed-lock are undisputed. According to the 1st respondent, the petitioner has neglected to maintain them and refused to pay maintenance allowance from 2003 onwards. That apart, the petitioner has treated the 1st respondent with cruelty and she was brutally attacked several times. The case instituted against the petitioner alleging the offence punishable under Sec.498A of the Indian Penal Code is culminated in conviction and the petitioner is sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹2,000/- by the judgment dated 13/8/2009. So, the 1st respondent is justified in residing separately, after leaving the company of the petitioner and she is entitled to get maintenance allowance without forfeiting her right to claim maintenance allowance.

5. Coming to the question of quantum of maintenance allowance. According to the 1st

respondent, she has no job or any source of income and she is unable to maintain herself and the 2nd respondent. Though the petitioner has contended that the 1st respondent has been working in a firm by name "Malabar Enterprises" Kolakkadu, for the last eight years, no evidence has been adduced to substantiate the said contention. The Proprietor of the said firm was examined as C.P.W.2 and she deposed that no employees are there in her firm and the 1st respondent had never been employed in her proprietary concern. So, it can safely be concluded that the 1st respondent is unable to maintain herself and the 2nd respondent.

6. According to the 1st respondent, the petitioner is a driver by profession having Heavy licence and he is employed in a bus as driver and getting ₹20,000/- per month. The petitioner himself admitted that he is a driver by profession; but he is a driver in a jeep only; but he admitted that he is having Heavy licence. According to him, he is getting ₹2,500/- per month

only. As rightly held by the court below, even otherwise, being a healthy young man, he can earn not less than ₹500/- to ₹600/- per day. So, he is presumed to be having income not less than ₹15,000/- per month. A husband is liable to pay maintenance allowance in accordance with the status, standard of life and day-to-day requirements of his wife and children. Considering the steep hike in the cost of living, I find that the quantum of maintenance allowance determined by the court below at the rate of ₹3,000/- per month to the 1st respondent and ₹2,000/- per month to the 2nd respondent is just and proper and no interference is called for under the revisional jurisdiction.

7. The learned counsel for the petitioner prayed for granting some time to pay the arrear. Having regard to the facts and circumstances of this case, the petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be remitted within two months and the remaining shall

be remitted within the next two months. In case the petitioner fails to pay the first instalment within the time specified above, this instalment facility will stand automatically revoked and the respondents will be at liberty to realise the entire arrear in lump sum in accordance with law.

This revision petition is disposed of accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge