

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

RPFC.No. 291 of 2014 ()

AGAINST THE ORDER IN MC 283/2012 of FAMILY COURT,
NEDUMANGADU DATED 05-06-2014

REVISION PETITIONER/RESPONDENT:-

JOY.S., AGED 42 YEARS, S/O.SHIMSHON,
KOTTARAKUZHI PUTHEN VEEDU, VAZHICAL P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.SANU.S.PANICKER
SRI.S.RAMACHANDRAN NAIR

RESPONDENTS/PETITIONERS:-

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1. BINDU.P., AGED 35 YEARS,
D/O.KOSUALYA, KOTTARAKUZHI PUTHEN VEEDU,
VAZHICAL P.O., THIRUVANANTHAPURAM - 695 001.
 2. JOBY, AGED 4 YEARS, D/O.BINDU,
KOTTARAKUZHI PUTHEN VEEDU, VAZHICAL P.O.,
THIRUVANANTHAPURAM - 695 001,
REPRESENTED BY 1ST RESPONDENT.

BY ADV. SRI.G.SUDHEER

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

R.P.(F.C.) No.291 OF 2014

Dated 9th November, 2015

ORDER

The respondent in M.C.No.283 of 2012 on the files of Family Court, Nedumangadu is the revision petitioner herein. The captioned revision petition has been filed challenging the order passed thereon by the Family Court on 5.6.2014 directing the revision petitioner herein to pay maintenance to the respondents herein respectively at the rate of ₹ 4,000/- and ₹ 2,000/-. The first respondent herein is the wife of the revision petitioner and the second respondent is the daughter born in the wedlock of the revision petitioner and the first respondent. A perusal of the pleadings in this revision petition as also the impugned order would reveal that the revision petitioner did not dispute the marriage with the first respondent and also the paternity of the second respondent. The marriage between the revision petitioner and the first respondent was solemnised on 16.9.2006. Owing to acute disharmony in their relationship the first respondent left the matrimonial home. During the cross examination of the first respondent she deposed; "നിങ്ങൾ തന്നിഷ്ട പ്രകാരം ജീവിക്കുന്നു എന്ന് പറയുന്നുണ്ടായിരുന്നു. അത് ശരിയല്ല. വീട്ടിൽ

വന്ന് അടിച്ചിറക്കിയപ്പോൾ പരാതി കൊടുത്തു.” Subsequently, the respondents herein filed M.C.No.283 of 2012 under Section 125 of the Code of Criminal Procedure claiming maintenance. It has been alleged therein that though the revision petitioner herein was legally bound to maintain them and also capable of maintaining them he has been neglecting to maintain them, without any justification. The first respondent was examined as PW1 and the revision petitioner herein was examined as CPW1 before the Family Court. Evidently, they had tendered oral evidence in support of their respective pleadings. After considering the arguments advanced on behalf of both sides and perusing the evidence on record the Family Court arrived at the conclusion that the revision petitioner herein is bound to maintain the respondents and that he is capable of maintaining them. Based on such findings the M.C. was allowed in part with a direction to the revision petitioner herein/the respondent therein, to pay monthly maintenance at the rate of ₹ 4,000/- to the first petitioner/the first respondent herein and ₹ 2,000/- to the second petitioner/the 2nd respondent herein from the date of petition. Further it was ordered that the first petitioner/first respondent herein is entitled to receive the amount due to the second petitioner/second respondent. It is challenging the said order that the captioned revision petition has been filed.

2. On 11.8.2014 when this matter came up for consideration notice on admission to the respondents was issued and in Crl.M.A.No.5024 of 2014 this Court passed an interim order. Execution of the impugned order was stayed on condition that the petitioner should deposit 50% of the amount of maintenance due under the impugned order. When the matter came up for further consideration on 2.3.2015 the learned counsel for the petitioner submitted that the petitioner had failed to comply with the condition in the interim order dated 11.8.2014.

3. As noticed hereinbefore, the revision petitioner had not disputed the marriage with the first respondent and also the paternity of the second respondent. So also, there is absolutely no case for him that he is physically incapable to maintain them. The case of the first petitioner/first respondent viz., the wife of the revision petitioner is that the revision petitioner is getting a monthly income of ₹ 25,000/- and at the same time, she is having no income at all to maintain herself as also the child. True that, apart from the oral testimony of the first respondent as PW1 no evidence was adduced to establish the actual income of the revision petitioner. The revision petitioner herein filed an objection before the Family Court to the effect that the first respondent

herein/the first petitioner therein was getting a monthly income of ₹ 5000/-. But, at the same time, the revision petitioner did not adduce any evidence to establish the said contention. When there is nothing on record to show that the first respondent, the wife of the revision petitioner is capable of maintaining herself and in the absence of any evidence to show that she had incurred disqualification in terms of the provisions under Section 125(4) Cr.P.C. the entitlement of the first respondent for maintenance being the wife of the revision petitioner, cannot be disputed or denied. As noticed hereinbefore, the paternity of the second respondent was also not disputed by the revision petitioner. The second respondent was aged 4 years at the time of filing of the M.C. In such circumstances, in the light of the evidence on record I do not find any error or perversity in the finding of the Family Court that the revision petitioner is liable to maintain the respondents. In such circumstances, the question is whether the rate of maintenance as fixed by the Family Court invites any interference ? As noticed hereinbefore, apart from the assertion that the revision petitioner is getting a monthly income of ₹ 25,000/-, which fact was denied by him in his objection, nothing was brought on record by the first respondent to establish the income of the revision petitioner. Evidently, there is nothing on record to show that he is not a physically abled person, in other words, he is a physically

disabled person. In such circumstances, when the factum of marriage and the paternity of the second respondent are admitted the revision petitioner cannot wriggle out of his responsibility to maintain the respondents who are none other than his wife and child. As per the impugned order the revision petitioner has been directed to pay monthly maintenance at the rate of ₹ 4,000/- to the first petitioner/the first respondent herein and ₹ 2,000/- to the second petitioner/second respondent herein from the date of petition. Considering the absence of any evidence regarding the monthly income of the revision petitioner I am of the view that directing him to pay a monthly maintenance of ₹ 6,000/- altogether cannot be justified. A perusal of the impugned order would reveal that there is no specific finding regarding the income of the revision petitioner. The revision petitioner was also called upon to pay the amount from the date of petition viz., 15.05.2012. Considering all these aspects while confirming the order of the Family Court regarding the liability of the revision petitioner to maintain the respondents I am of the view that the quantum of maintenance ordered requires a modification.

In the result, the revision petition is allowed in part. In supersession of the direction of the Family Court to pay monthly maintenance of ₹ 4,000/- to the first petitioner/the first respondent

herein the revision petitioner is directed to pay monthly maintenance at the rate of ₹ 2,500/-. The direction to pay ₹ 2,000/- to the second petitioner/the minor daughter of the revision petitioner is maintained. The order to pay the maintenance from the date of petition is not interfered with. In other words, the revision petitioner is liable to pay the amount as above from the date of petition that is, 15.5.2012. It is also made clear that the first respondent herein is entitled to receive the amount due to the second respondent herein.

Sd/-
C.T.RAVIKUMAR
Judge

TKS