

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

RPFC.No. 293 of 2014 ()

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AGAINST THE ORDER DATED 27-03-2014 IN MC. NO. 208/2013 OF FAMILY COURT,
TIRUR.**

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REVISION PETITIONER/RESPONDENT:

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SAJEEVAN A.V.,
S/O. MANGALASSERI SANKARAN NAIR,
AVILASSERI VADOOR HOUSE, SANTHY SADANAM,
NELLIKODE AMSOM, GOVINDAPURAM DESOM,
GOVINDAPURAM P.O., KOZHIKODE TALUK,
KOZHIKODE DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ.

RESPONDENTS/PETITIONERS:

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- 1. SANTHI M.K., AGED 42 YEARS,
W/O.SAJEEVAN, PRASANTHI HOUSE, K.P.M. COMPLEX,
THENHIPALAM AMSOM AND DESOM, KOHINOOR P.O., PIN-676 104,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.**
 - 2. SAYI SANKAR, AGED 18 YEARS,
S/O. SAJEEVAN A.V., PRASANTHI HOUSE, K.P.M. COMPLEX,
THENHIPALAM AMSOM AND DESOM, KOHINOOR P.O., PIN-676 104,
TIRURANGADI TALUK, MALAPPURAM DISTRICT.**
 - 3. HARITH SAYI, AGED 14 YEARS (MINOR),
S/O. SAJEEVAN, PRASANTHI HOUSE,
REPRESENTED BY THE MOTHER
1ST RESPONDENT ABOVE, -DO- -DO- -DO- -DO-.**

BY ADV. SRI.K.RAKESH.

**THIS REV. PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

K.HARILAL, J.

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R.P.(FC) No.293 of 2014

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Dated this the 19th day of August, 2015

ORDER

The revision petitioner is the respondent in M.C.No.208/13 on the files of the Family Court, Tirur, filed by the respondents herein, who are the wife and children of the petitioner, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the 1st respondent, she is the legally wedded wife of the petitioner and the respondents 2 and 3 are the children born in that wedlock. But he has neglected to maintain them and refused to pay maintenance allowance from 2004 onwards and thereafter, they are living separately. Though she is conducting a ladies hostel she is unable to maintain herself and two children; whereas the petitioner is working as a salesman and having sufficient means to pay maintenance allowance to them. After considering the

rival pleas and the evidence let in by both parties, the court below directed the petitioner to pay maintenance allowance @ ₹3,000/- to the 1st respondent and ₹2,000/- each to the respondents 2 and 3. This order is under challenge in this revision petition.

2. The learned counsel for the petitioner submits that the petition itself is vitiated by material suppression as the 1st respondent has not disclosed the fact that she is conducting a ladies hostel. But the court below failed to consider the suppression of material facts in its correct perspective and the petitioner was ordered to pay maintenance allowance to the 1st respondent also. It is also contended that the quantum of maintenance allowance determined by the court below is excessive and disproportionate with the income of the petitioner.

3. The learned counsel for the respondents submits that at the time of filing the petition, her mother was conducting ladies hostel and subsequently the mother was

died on 14.8.2012. The petition was filed on 10.10.2011. Therefore, there was no suppression of material facts in the petition.

4. It has come out in evidence that the respondents have been residing separately from 2004 onwards and no evidence had been adduced to prove that the petitioner has paid any amount towards maintenance allowance after 2004. For that reason alone, the court below is justified in finding that the respondents are entitled to get maintenance allowance.

5. Coming to the suppression of material facts, the mother of the 1st respondent was died only on 14.08.2012 and the petition was filed on 10.10.2011. Even though it has come out in evidence that the licence to conduct hostel stands in the name of 1st respondent, her case is that even though the licence stood in her name, the mother was conducting the hostel and she took the management of the hostel only after the death of her mother. No evidence had

been adduced to arrive at a different view. It is pertinent to note that, in evidence, the case of the 1st respondent is that even though she is conducting a hostel, she is unable to maintain herself and the children. Going by Section 125 of the Code of Criminal Procedure, the wife is entitled to get maintenance allowance if she is unable to maintain herself with her income even if she is an earning person. In this view, the court below is justified in finding that even if she is conducting the hostel she is entitled to get maintenance allowance.

6. Coming to the quantum of maintenance allowance, as regards the 1st respondent, even if the admitted income disclosed in evidence, while cross examining the 1st respondent, is taken at its face value, I am of the opinion that it is not sufficient to meet the requirements of a family consists of mother and two children. In that view of the matter, the court below is justified in fixing an amount of ₹ 3,000/- per month to the 1st respondent.

7. Coming to the quantum of maintenance allowance granted to 2nd and 3rd respondents, it is not disputed that they are minors at the time of filing the petition. It is also admitted that now the 2nd respondent had attained majority and the court below directed to pay maintenance allowance to the 2nd respondent till she attains majority. Therefore, there is no need to re-consider the quantum of maintenance allowance fixed to the 2nd respondent. As regards the 3rd respondent, even now, he is a minor and having regard to his requirements, the quantum of maintenance allowance fixed @ ₹2,000/- per month is not excessive. Thus, there is no reason to interfere with the findings of the court below and this revision petition is dismissed.

8. The learned counsel for the petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the revision petitioner is given four months' time to pay the arrear, provided that, the revision petitioner shall pay half of the entire arrear within

a period of 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 within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

This revision petition is devoid of merits and dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge