

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

RPFC.No. 295 of 2014 ()

AGAINST THE ORDER IN MC 162/2011 of FAMILY COURT,ERNAKULAM DATED
24-09-2013

REVISION PETITIONER/ RESPONDENT:

ANTONY M.A, AGED 37 YEARS
S/O M.J. AUGUSTINE, MOONUTHENGUNKAL,
PUTHU VYPPU P.O
KOCHI 682008

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.V.C.SARATH
SRI.VIPIN NARAYAN

RESPONDENTS/PETITIONERS:

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1. DELPHY ROSE, AGED 30 YEARS
D/O M.J. DANIEL, MANKIDIYIL HOUSE,
KOCHODATHU PARAMBU
NAZERATH, KOCHI 682002.
 2. JUDIT ANTONY,, AGED 1 YEARS
D/O ANTONY M.A, MANKIDIYIL HOUSE,
KOCHODATHU PARAMBU, NAZERATH, KOCHI-2
REPRESENTED BY HER MOTHER AND
NATURAL GUARDIAN DELPHY ROSE
D/O M.J DANIEL, MANKIDIYIL HOUSE,
KOCHODATHU PARAMBU
NAZERATH, KOZHI 682002.

R1-R2 BY ADV. SRI.S.SREEKUMAR (SR.)
R1-R2 BY ADV. SRI.P.MARTIN JOSE
R1-R2 BY ADV. SRI.S.VAIDYANATHAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 10-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

R.P.(F.C.)No.295 of 2014

Dated 10th March, 2015

ORDER

This revision petition is directed against the order dated 24.9.2013 in M.C.No.162 of 2011 of Family Court, Ernakulam. Admittedly, the revisionist is the husband of the first respondent and the 2nd respondent is the child born in their wedlock. The respondents herein moved M.C.No.162 of 2011 under Section 125 Cr.P.C. seeking maintenance from the revision petitioner essentially contending that though he is capable of maintaining them he is neglecting to do so. It is contended that the revision petitioner is working abroad and he is getting a monthly income of ₹ 80,000/-. It is the further case that the first respondent gave birth to the 2nd respondent on 8.2.2011 and she was born with certain congenital disabilities. The 2nd respondent had to undergo a surgery and the entire expenses for the same was met by the father of the first respondent. It is also stated therein that after the birth of the 2nd respondent the revision petitioner did not even visit the child at the hospital. In short, the contention is that the revision petitioner deserted the respondents and he has been neglecting to maintain them though he is capable of maintaining

them. The revision petitioner entered appearance in the M.C. and filed a counter affidavit. On the side of the respondents the first respondent got herself examined as PW1 and Exts.A1 to A1(j) were marked. The revision petitioner did not mount the box to adduce evidence and in fact, got marked Ext.B1 salary certificate which revealed his monthly salary as 3000 Dirhams. After considering the evidence on record the Family Court found that the revision petitioner had not disputed the factum of marriage as also the paternity of the 2nd respondent and going by the evidence on record it could not be held that the first respondent is refusing to live with the revision petitioner without any sufficient reason. Though the revision petitioner has disputed the contention of the first respondent that he is getting an amount of ₹ 80,000/- by way of his monthly salary taking into account Ext.B1 salary certificate the Family Court found that he is getting an amount of ₹ 30,000/- per month. In the aforesaid circumstances, the Family Court held that the revision petitioner is liable to maintain the respondents and fixed monthly maintenance payable to them as ₹ 5,000/- and ₹ 2,500/- respectively. This revision petition is filed against the said order.

2. I have heard the learned counsel for the revision petitioner and also the learned counsel appearing for the respondents.

3. As noticed hereinbefore, the revision petitioner has not mounted the box to adduce any evidence before the Family Court. At the same time, the pleadings in this revision petition itself would reveal that the revision petitioner is not disputing the factum of his marriage with the first respondent as also the paternity of the 2nd respondent. The first respondent herein mounted the box and adduced evidence as PW1. The Family Court considered the evidence tendered by her and found that she is living separately with the revision petitioner with sufficient reason. There cannot be any doubt with respect to the position that the pleadings in a petition cannot take the place of evidence. The only evidence available before the Family Court was the evidence tendered by the first respondent. Admittedly, in the counter affidavit filed before the Family Court, the revision petitioner herein failed to adduce any evidence to controvert and overcome the evidence of the first respondent herein as PW1. I do not find any legal infirmity in the finding of the Family Court that the revision petitioner is liable to maintain the respondents. In such circumstances, what survives for consideration is whether there is any scope for interfering with the quantum of maintenance fixed by the Family Court. As noticed hereinbefore, the Family Court fixed ₹ 5,000/- as the amount of monthly

maintenance payable to the first respondent and ₹ 2,500/- as the monthly maintenance payable to the 2nd respondent. In the matter of fixation of quantum of maintenance under Section 125 Cr.P.C. the capability and capacity of the person from whom such maintenance is sought for are to be taken into account. The revision petitioner did not dispute the statement regarding his salary contained in Ext.B1 and in fact, it was produced by him though he has not mounted the box to adduce any evidence. It would reveal that he is getting a monthly salary of 3000 Dirhams. There is no case for the revision petitioner that the said amount is less than ₹ 30,000/-. There is no contention for either side that 3000 Dirhams is less than ₹ 30,000/-. In such circumstances, the Family Court cannot be found fault in fixing the monthly salary of the revision petitioner as ₹ 30,000/-. The evidence of PW1 would reveal that the 2nd respondent got certain congenital disabilities. In such circumstances, the fixation of ₹ 2,500/- as monthly maintenance to the 2nd respondent cannot be said to be excessive warranting an order in exercise of the revisional jurisdiction. What survives for consideration is whether fixation of ₹ 5,000/- as monthly maintenance in favour of the first respondent needs interference. Taking into account the cost of living as also the fact that she has to meet the treatment expenses of the 2nd respondent the fixation of monthly maintenance payable to the first

respondent as ₹ 5,000/- also cannot be said to be excessive warranting interference by this Court . In such circumstances, I do not find any reason to interfere with the quantum of maintenance fixed by the Family Court in respect of the respondents as ₹ 5,000/- and ₹ 2,500/- respectively. In short, the revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS