

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

RPFC.No. 340 of 2014 ()

AGAINST THE ORDER IN MC 78/2011 of FAMILY COURT,
THIRUVALLA DATED 28-03-2014

REVISION PETITIONER(S)/REVISION PETITIONER/RESPONDENT:

BINU B., AGED 37 YEARS
S/O.BHASKARAN PILLAI.N, THARAYIL PUTHANVEEDU
KAIPPATTOOR MURI, KAIPPATTOOR, PATHANAMTHITTA
REPRESENTED BY POWER OF ATTORNEY HOLDER
BHASKARAN PILLAI.N. AGED 69 YEARS
S/O LATE NARAYANA NAIR, THARAYIL PUTHANVEEDU
KAIPPATTOOR.P.O, KOZHENCHERRY TALUK, PATHANAMTHITTA.

BY ADVS.SRI.V.MANOJ KUMAR
SRI.IYPE JOSEPH

RESPONDENT(S)/RESPONDENT/PETITIONER:

REJI P.NAIR,
D/O.INDIRA NAIR, ASANTAYATHU HOUSE
CHENEERKARA VILLAGE, MANJINIKARA MURI, MATHOOR.P.O
KOZHENCHERRY TALUK.

R1 BY ADV. SRI.C.RAJENDRAN

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

B. SUDHEENDRA KUMAR, J.

.....
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.....

Dated this the 9th day of September, 2015

ORDER

The revision petitioner is the respondent in M.C. No. 78 of 2011 on the files of the Family Court, Thiruvalla. The revision petitioner was directed to pay monthly maintenance amount of Rs. 2,000/- to the respondent herein by the court below. Aggrieved by the said order, this revision petition has been filed.

2. According to the respondent herein, she started living separately due to the cruelty of the revision petitioner. She is working in a Dental Clinic drawing a salary of Rs. 3,000/- which is not at all sufficient to meet both ends. The revision petitioner is working abroad drawing a monthly salary of Rs. 60,000/-.

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Since the revision petitioner is wilfully neglected to maintain the respondent herein from 3-10- 2008 onwards, she claimed an amount of Rs. 6000/- per month towards her maintenance. The respondent refuted the contentions of the revision petitioner and contended that the revision petitioner was impotent and hence the marriage was not consummated. The respondent herein was working in a Dental Clinic drawing a salary of Rs. 5000/-. The respondent is having sufficient means to maintain herself. The revision petitioner is having a seasonal employment abroad and getting a monthly income of Rs. 15,000/- only from which an amount of Rs. 12,000/- is needed for a month for his daily use.

3. Before the court below, the respondent herein got examined as PW1 and Ext. A1 was marked by the petitioner. Exts. B1 and N2 were marked for the respondent.

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4. Heard both sides.

5. The learned counsel for the revision petitioner has argued that eventhough the revision petitioner filed CMP 99/2012 before the court below praying for marking three documents as evidence from his side, the court below did not pass any order on the said application before passing the order impugned and on that reason alone, the order impugned is not sustainable. It is borne out from the records that the revision petitioner filed CMP 99/2012 before the court below with a prayer to get three documents marked as defence documents. However, no order is seen passed on the said petition by the court below. The court below should have disposed of the above said petition before passing the order impugned. Since the court below did not pass any order in CrI.M.P. 99 of 2012, it virtually deprived of the right of the revision petitioner from adducing the

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said document as evidence in the case. For the said reason alone, the order impugned cannot be said to be legal and correct. It is also to be noted that Ext. A1 was marked subject to proof. It was not marked through any witness. The proceedings sheet of the court below would show that the said document Ext. A1 was marked on 2-7-2013 eventhough the learned counsel for the revision petitioner objected to the same.

6. The learned counsel for the respondent herein has prayed for granting an opportunity to adduce evidence in proof of Ext.A1 document. There is yet another reason also to show that the order impugned is not correct. The court below raised a point as to whether the respondent had been wilfully neglecting to maintain the petitioner. However, the answer to that point is not found in the order impugned. For the said reason also, the order impugned is not sustainable and consequently, the same is liable

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to be set aside, and I do so.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remitted to the court below for fresh disposal of MC 78 of 2011 in accordance with law, affording sufficient opportunity to both sides to adduce further evidence. The parties shall appear before the trial court on 15-10-2015.

Registry is shall transmit the entire lower court records to the court below.

**B. SUDHEENDRA KUMAR,
JUDGE.**

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