

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

RPFC.No. 348 of 2014 ()

AGAINST THE ORDER IN MC 144/2013 of FAMILY COURT, NEDUMANGAD
DATED 04-08-2014

REVISION PETITIONER(S)/COUNTER PETITIONER:

BENATSON L., AGED 41 YEARS
S/O. LATE LASSAR, KANAKATHUVILA VEEDU
NEDUNKUZH JUNCTION, VILAPPILSALA P.O
VILAPPIL VILLAGE, KATTAKADA TALUK
THIRUVANANTHAPURAM - 695 573.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S)/PETITIONERS:

1. S. PRASANTHI, AGED 35 YEARS
D/O. KRISHTU PRABHARATHAM, SUBHASH COTTAGE, ERAYANKODE
CHERIYAKONNI P.O., ARUVIKKARA VILLAGE
NEDUMANGAD TALUK, THIRUVANANTHAPURAM.

2. APARNA (MINOR)
D/O. S. PRASANTHI, AGED 9 YEARS, SUBHASH COTTAGE
ERAYANKODE, CHERIYAKONNI P.O., ARUVIKKARA VILLAGE
NEDUMANGAD TALUK
THIRUVANANTHAPURAM.
REPRESENTED BY HER MOTHER S. PRASANTHI
IST RESPONDENT HEREIN.

R1-R2 BY ADV. SRI.NAGARAJ NARAYANAN
R1-R2 BY ADV. SRI.SAIJO HASSAN
R1-R2 BY ADV. SRI.BENOJ C AUGUSTIN
R1-R2 BY ADV. SRI.PRATHAP PILLAI
R1-R2 BY ADV. SRI.SEBIN THOMAS
R1-R2 BY ADV. SRI.VIVEK V. KANNANKERI
R1-R2 BY ADV. SMT.J.KASTHURI
R1-R2 BY ADV. SRI.VISHNU BHUVANENDRAN

THIS REV.PETITION (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
24-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.P.(FC).348/14

APPENDIX

ANNEXURE 1:TRUE PHOTOCOPIES OF THE FEES CARD AND RECEIPT DATED 8.7.2014 ISSUED FROM SANTHINIKETHAN SCHOOL TO THE SECOND RESPONDENT.

ANNEXURE 2:TRUE PHOTOCOPY OF THE O.P CARD ISSUED FROM GOVERNMENT AYURVEDA COLLEGE HOSPITAL, THIRUVANANTHAPURAM.

RESPONDENTS' EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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R.P.(F.C) No.348 OF 2014

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Dated this the 24th day of March, 2015

ORDER

This revision petition is directed against order dated 4.8.2014 in M.C.No.144 of 2013 of the Family Court, Nedumangad. The respondents herein are respectively the wife and daughter of the petitioner and they filed the said M.C seeking maintenance from the revision petitioner under section 125 of the Code of Criminal Procedure. On due process, the petitioner entered appearance and resisted the claim of the respondents. To substantiate the claim, the first respondent herein got herself examined as PW1 and to resist the same, the revision petitioner herein got himself examined as CPW1. There was no documentary evidence on either side going by the appendix. However, the learned counsel for the revision petitioner submitted that in fact, paragraph 5 of the impugned order would

reveal that Ext.R1 was produced and marked on the side of the revision petitioner. After evaluating the evidence, the Family Court found that the revision petitioner is liable to maintain the respondents and consequently passed an order directing the revision petitioner to pay monthly maintenance at the rate of ₹5000/- and ₹2000/- respectively to the respondents from 17.4.2013, the date of filing of the petition. This revision petition is filed in such circumstances challenging the said order.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondents. The learned counsel for the petitioner would fairly submit that the revision petitioner did not wish to mount any challenge against the order for effecting payment of monthly maintenance @ Rs.2000/- to the second respondent, the child born in the wedlock of the petitioner with the first respondent who is only aged 10 years. Evidently, the revision petitioner did not dispute the marriage with the first respondent. In such circumstances, what

survives for consideration is whether the direction in the impugned order for payment of monthly maintenance to the first respondent @ ₹5000/- calls for any interference. The marriage between the revision petitioner and the first respondent was solemnised on 2.1.2003. Evidently, while resisting the claim for maintenance of the first respondent, the revision petitioner took up a contention that the first respondent is refusing to stay with him without any sufficient reason. The learned counsel for the revision petitioner submitted that besides the aforesaid contention, certain other contentions were also taken up by the revision petitioner and in fact, the revision petitioner has let in evidence in support of such contentions. It is further submitted that a perusal of the impugned order would reveal that the Family Court has failed to consider the evidence on record and the order was passed without any application of mind. Per contra, the learned counsel for the respondents submitted that the order of the Family Court does not suffer from any illegality or infirmity warranting interference in exercise of the revisional jurisdiction. It is submitted that the Family

Court found the revision petitioner liable to maintain the respondents and fixed monthly maintenance @ ₹5000/- and ₹2000/- to the respondents taking into account all the aspects of the issue.

3. In the light of the rival contentions, the impugned order has to be looked into to see whether it invites any interference. When once, the marriage is not in dispute, to mount challenge against monthly maintenance fixed under section 125 Cr.P.C, the revision petitioner-husband has to establish that he had adduced evidence to prove that the wife is not able to maintain herself or that wife had incurred a disqualification to claim maintenance in view of the provisions under section 125(4), Cr.P.C. Evidently, the revision petitioner took up the precise case that the wife has deserted him or in other words, the claimant wife is refusing to stay with him without any sufficient reason. When such contentions are taken up and evidence was let in to support the same, those matters require a serious consideration in the light of the evidence on record. In this

case, evidently, there is no detailed discussion of the evidence on record though it is stated in the impugned order thus:-"Therefore from the evidence adduced, I am satisfied that it is the respondent who willfully deserted the petitioners". I have no hesitation to hold that there is absolute absence of any discussion of the evidence on record which constrained the Family Court to arrive at such a satisfaction. There cannot be any doubt with respect to the fact that an order passed under section 125, Cr.P.C is a revisable order and in such circumstances, it is incumbent on the court below to pass an order with application of mind and rejecting the reasons for the conclusions. Going by the provisions under section 125(4) Cr.P.C, if the wife refuses to live with her husband without any sufficient reason it would disentitle the wife to claim maintenance. In this case, the very case of the revision petitioner is that the first respondent-wife has deserted him. In such circumstances, the mere statement 'I am satisfied that it is the respondent (the revision petitioner herein) who wilfully deserted the petitioners' would not satisfy the legal requirement of a proper

consideration. In the light of the evidence on record, the Family Court was bound to consider the questions whether the first respondent is able to maintain herself and whether the first respondent stays away from the revision petitioner without any sufficient reason or in other words, whether she had deserted the revision petitioner. These points are bound to be considered in the light of the contention taken up by the revision petitioner that it was the first respondent/first petitioner therein who deserted him. In a petition under section 125 Cr.P.C, the capacity and capability of the person from whom the maintenance is sought for is also to be considered in detail. There is no proper discussion with respect to those aspects as well. No serious dispute has been raised by the revision petitioner against the direction to pay ₹2000/- to the second respondent as maintenance. In fact, the revision petitioner did not dispute his liability to maintain the second respondent and considering the fact that the second respondent is now, aged 10 years I find no reason at all to interfere with the findings in respect of the second respondent herein. In such circumstances, I am

of the view that the impugned order invites interference only to the extent it orders monthly maintenance to the first respondent/first petitioner before the Family Court. In the result, the impugned order passed by the Family Court in M.C.144 of 2013 is set aside to the extent it holds that the revision petitioner is liable to maintain the first respondent and it directs the revision petitioner to pay a monthly maintenance of ₹5000/- to the first respondent/first petitioner therein. Consequently, M.C.144 of 2013 is restored into the file of the Family Court for the purpose of deciding the aforesaid issue in the light of the evidence on record and observations made hereinbefore. Needless to say that after considering the entire evidence on record, an order shall be passed regarding the liability of the revision petitioner to maintain the first respondent and if it is found that he is liable to maintain her, to fix the quantum of maintenance, in accordance with law. It is made clear that this Court has not made any observation with respect to the merits of the rival contentions. This shall be done within a period of three months from the date of receipt of copy of this

order taking into account the fact that the M.C is of the year 2013.

This revision petition is disposed of as above.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

