

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

RPFC.No. 355 of 2014 ()

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AGAINST THE ORDER IN CMP.369 & 370 OF 2014 IN MC 1035/2010 of FAMILY  
COURT, TIRUR DATED 27-08-2014

REVISION PETITIONER(S)/PETITIONER/RESPONDENT:  
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SAMEER  
S/O. MUHAMMED KUTTY, KALLINGAL HOUSE  
KALPAKANCHERY AMSOM, NELLIKKUNNU DESOM  
P.O KALPAKANCHERY, TIRUR TALUK, MALAPPURAM

BY ADVS.SRI.SUNIL NAIR PALAKAT  
SRI.K.N.ABHILASH

RESPONDENT(S)/RESPONDENTS/PETITIONERS:  
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1. SAJNA, AGED 26 YEARS  
D/O. SAIDALAVI, CHOYIL PARAMBIL HOUSE, MK NAGAR  
P.O RANDATHANI, MARAKKARA AMSOM  
KALLARIMANGALAM DESOM, TIRUR TALUK, MALAPPURAM
2. HIBA, AGED 6 YEARS  
D/O. SAMEER  
REPRESENTED BY 1ST RESPONDENT MOTHER AND GUARDIAN SAJNA  
CHOYIL PARAMBIL HOUSE  
MK NAGAR, P.O RANDATHANI  
MARAKKARA AMSOM, KALLARIMANGALAM DESOM, TIRUR TALUK  
MALAPPURAM

R1&2 BY ADV. SRI.JAMSHEED HAFIZ

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON  
02-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**C.T. RAVIKUMAR, J.**

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**R.P.(FC). No.355 OF 2014**

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Dated this the 2<sup>nd</sup> day of February, 2015

**ORDER**

The revisionist-husband was the respondent in M.C.No.1035 of 2010 before the Family Court, Tirur moved by the respondents herein who are respectively the wife and daughter of the revision petitioner. The respondents filed the said petition under section 125 Cr.P.C seeking maintenance from the petitioner. The petitioner was set ex parte and an ex parte order was passed in the said M.C. Subsequently, the petitioner moved CMP Nos.369 of 2014 and 370 of 2014 in the M.C seeking respectively to condone the delay in filing the petition and to set aside the ex parte order. As per a common judgment dated 27.8.2014, the Family Court dismissed the application for condoning the delay and consequently, the application to set aside the ex parte order in the M.C was also dismissed. This revision petition has been filed challenging the said common order.

2. Obviously, an ex parte order is passed in the M.C directing the revision petitioner to pay maintenance at the rate of ₹4,000/- to the first respondent and ₹2,500/- to the second respondent per month. When this matter is taken up for consideration, the learned counsel for the revision petitioner submitted that the revision petitioner is ready to pay the past maintenance. It is further submitted that in fact the amount of past maintenance is only ₹84,500/- and that he had effected payment of ₹1,00,000/- towards the same. That apart, it is submitted that towards the amount in arrears under the impugned order, the revision petitioner has already deposited an amount of ₹1,13,000/-. Thus, according to the petitioner, altogether an amount of ₹2,13,000/- has been deposited by him and if that amount is adjusted against the amount payable, the balance amount payable is only ₹1,28,500/-. However, the learned counsel appearing for the respondents submitted that the liability of the revision petitioner towards the maintenance in terms of the impugned order is much more than that. Be that as it may, it is evident that the said order was passed ex parte. The fact that a respondent in a claim for maintenance

remained absent and set ex parte cannot and will not be a reason for the Family Court to pass an order without considering the entitlement of the petitioners before it, for maintenance. So also, even in such circumstances, the court is bound to fix the quantum of maintenance taking into account the alleged capacity and capability of the respondent and also other relevant aspects. A scanning of the impugned order would reveal that M.C.No.1035 of 2010 was allowed as above without any discussion of the pleadings and above all, without any discussion of the evidence. It is not discernible from the impugned order that what was the pleading of the petitioners before the Family Court regarding the avocation of the revision petitioner and also about his monthly income. Whether the first respondent got a case that she is having sufficient cause to live separately and she is not able to maintain her are also not evident from the order. In short, the impugned order does not reflect consideration of such relevant aspects. It is evident from the pleadings in this revision petition that the revision petitioner is not virtually disputing the marriage as also the paternity of the second respondent and his grievance is only with

respect to the fixation of the quantum of maintenance fixed by the Family Court. It is the contention of the revision petitioner that apart from the deposit under the orders of this Court, earlier, during the conciliation talks, he handed over an amount of ₹3,00,000/- to one Chungath Kareem who acted as the mediator. However, there is nothing on record which would suggest such a payment and certainly, it is a matter to be proved. That apart, it is the contention of the revision petitioner that the first respondent is refusing to live with him without any sufficient cause. That again is also a matter of evidence. Taking into account the circumstances in its entirety, I am of the view that it will only be appropriate to permit the revision petitioner to contest the matter on merits. In such circumstances, this revision petition is disposed of as hereunder:-

The impugned order in M.C.No.1035 of 2010 is set aside on condition that the revision petitioner deposits a further amount of ₹50,000/- within a period of three months from the date of receipt of a copy of this order, before the Family Court. In case the revision petitioner deposits the said amount within the above stipulated time,

the Family Court shall permit him to adduce evidence, if any, to resist the claim of the respondents. It is made clear that in case of failure on the part of the revision petitioner to pay the said amount within the above stipulated time, the Family Court shall proceed with the case and pass appropriate orders, in accordance with law, taking into account the observation made hereinbefore. Till fresh orders are passed in the aforesaid M.C, the revision petitioner shall continue to pay monthly maintenance to the respondents at the rate of ₹4,000/- and ₹2,500/- respectively. The amount fell in arrears at that rate shall also be paid by the revision petitioner within the above stipulated period. Needless to say that while calculating the same, the amount already paid by the revision petitioner towards maintenance shall be given due credit.

**Sd/-**  
**C.T. RAVIKUMAR**  
**(JUDGE)**

**spc/**

**C.T. RAVIKUMAR, J.**

**JUDGMENT**

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**September, 2010**