

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

RPFC.No. 371 of 2014 ()

AGAINST THE ORDER IN MC 14/2012 of FAMILY COURT,
THIRUVANANTHAPURAM DATED 14.8.2014

REVISION PETITIONER(S)/COUNTER PETITIONER:

N.SUINILKUMAR, AGED 40 YEARS,
S/O.NATARAJAN, PERUMICHIVILAKATHU VEEDU,
KONCHIRAVILA MANACAUD P.O., MANACAUD VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.R.S.KALKURA
SRI.K.BALACHANDRAN (VARKALA)

RESPONDENT(S)/PETITIONER:

ABHINAV S.N.,
MINOR, S/O.SUNILKUMAR
REPRESENTED BY HIS GRAND MOTHER C.VIMALA
RESIDING AT NEETHU BHAVAN, EDAVACODU, SREEKARYAM P.O.
ULLOOR VILLAGE, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.RAM MOHAN.G.
R1 BY ADV. SRI.G.P.SHINOD
R1 BY ADV. SRI.MANU V.
R1 BY ADV. SRI.GOVIND PADMANAABHAN
R1 BY ADV. SRI.AJIT G.ANJARLEKAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 21-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.371 of 2014

Dated this the 21st day of October, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.14/12 on the files of the Family Court, Thiruvananthapuram. The above M.C. was filed by the respondent herein, who is the son of the petitioner represented by the power of attorney holder, claiming maintenance allowance under Section 125 of the Cr.P.C. According to the respondent, he is a minor aged 6 years only and his mother expired on 29.11.2008 and now he is under the custody of the maternal grandmother, who represented him in the M.C. The petitioner is employed in Oman and earning Rs.40,000/- as monthly income. But, he neglected to maintain him and refused to pay maintenance allowance to him from 2009 onwards. Hence he prayed for an order directing the petitioner to pay

maintenance allowance to him.

2. The petitioner filed an objection admitting the marital status of the deceased mother of the respondent and the paternity of the respondent. The main contention raised in the M.C. is that the mother of the wife took illegal possession of the property bequeathed under the will and he filed a criminal prosecution case against the mother of his wife alleging offence under Sections 465, 468, 471 and 420 read with Section 12B of the IPC and the mother of his wife, with whom the respondent is now residing, is having sufficient means to provide maintenance to the respondent. It is also contended that he had given Rs.10,20,000/- by way of cheque and he had been contributing money for the welfare of the child; but, no evidence was forthcoming to show the payment of maintenance allowance to the respondent. During the course of cross examination, he stated that, when the child was admitted in the school, he had paid the required school fee and met other expenses. But, no evidence was forthcoming to substantiate that

contention also. Further, he contended that the amount claimed by the respondent is exorbitant and now he is residing along with his brother and he has no income at all. After considering the evidence on record, the court below directed the petitioner to pay maintenance allowance at the rate of Rs.5,000/- per month. The correctness of the quantum of maintenance allowance determined by the court below is under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner. The short point that arises for consideration is, whether the court below is justified in directing the petitioner to pay maintenance allowance at the rate of Rs.5,000/- per month.

4. The paternity of the child is not disputed. It is also admitted that he was working abroad. But his contention is that now he is residing along with his brother and he has no income at all. As rightly noted by the court below, he has no case that he has been suffering from any ailment. The petitioner failed to produce evidence to show that he had paid any amount

towards maintenance allowance to the respondent after 2009, though he claimed that he had remitted the required fees in the school. A healthy able bodied man is presumed to be having sufficient means to pay maintenance allowance to his children. The petitioner has no case that he is physically disabled or incapacitated to do work so as to earn livelihood for his family. "Means" provided under Section 125 of the Cr.P.C. signifies not only movable or immovable property in the shape of salary, agricultural income or rent, but also the earning capacity of a physically able bodied man. Similarly, "maintenance" includes provision for food, shelter, residence, medical attendance, educational expenses of the children, etc. In the instant case, the respondent is aged 9 years and he is a school going child. The respondent has the right to live with the status and standard of life on a par with that of the petitioner herein and the petitioner has the statutory liability to pay maintenance allowance accordingly. In the above view of the matter, I do not find any kind of illegality or

impropriety in the fixation of the quantum of maintenance allowance at the rate of Rs.5,000/- per month.

5. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two months and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the respondent is at liberty to realise the entire arrear in lump sum, in accordance with law.

This revision petition is dismissed accordingly.

K. HARILAL, JUDGE

okb.